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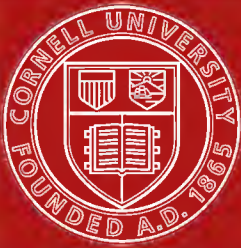
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# Diplomatic Papers

VOL. XII. — I



# The Right of Search

*Mr. Webster to the President of the United States.*

Department of State, Washington, February 26, 1843.

The Secretary of State, to whom has been referred a resolution of the House of Representatives of the 22d instant, requesting that the President of the United States "communicate to that house, if not in his opinion improper, whatever correspondence or communication may have been received from the British government respecting the President's construction of the late treaty concluded at Washington, as it concerns an alleged right to visit American vessels," has the honor to report to the President that Mr. Fox, her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, came to the Department of State on the 24th instant, and informed the Secretary that he had received from Lord Aberdeen, her Majesty's principal Secretary of State for Foreign Affairs, a despatch, under date of the 18th of January, which he was directed to read to the Secretary of State of the United States.

The substance of the despatch was, that there was a statement in a paragraph of the President's message to Congress, at the opening of the present session, of serious import, because, to persons unacquainted with the facts, it would tend to convey the supposition, not only that the question of the right of search had been disavowed by the plenipotentiary at Washington, but that Great Britain had made concessions on that point.

That the President knew that the right of search never formed the subject of discussion during the late negotiation, and that neither was any concession required by the United States government, nor made by Great Britain.

That the engagement entered into by the parties to the treaty of Washington for suppressing the African slave-trade was unconditionally proposed and agreed to.

That the British government saw in it an attempt, on the part of the government of the United States, to give a practical effect to their repeated declarations against that trade, and recognized with satisfaction an advance toward the humane and enlightened policy of all Christian states, from which they anticipated much good. That Great Britain would scrupulously fulfil the conditions of this engagement, but that from the principles which she has constantly asserted, and which are recorded in the correspondence between the ministers of the United States in England and herself in 1841, England had not receded, and would not recede. That he had no intention to renew, at present, the discussion upon the subject. That his last note was yet unanswered. That the President might be assured that Great Britain would always respect the just claims of the United States. That the British government made no pretension to interfere in any manner whatever, either by detention, visit, or search, with vessels of the United States, known or believed to be such; but that it still maintained, and would exercise when necessary, its own right to ascertain the genuineness of any flag which a suspected vessel might bear; that if, in the exercise of this right, either from involuntary error, or in spite of every precaution, loss or injury should be sustained, a prompt reparation would be afforded; but that it should entertain, for a single instant, the notion of abandoning the right itself, would be quite impossible.

That these observations had been rendered necessary by the message to Congress. That the President is undoubtedly at liberty to address that assembly in any terms which he may think proper; but if the Queen's servants should not deem it expedient to advise her Majesty also to advert to these topics in her speech from the throne, they desired, nevertheless, to hold themselves perfectly free, when questioned in Parliament, to give all such explanations as they might feel to be consistent with their duty and necessary for the elucidation of the truth.

The paper having been read, and its contents understood, Mr. Fox was told, in reply, that the subject would be taken into consideration, and that a despatch relative to it would be sent at

# The Right of Search

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an early day to the American minister in London, who would have instructions to read it to her Majesty's principal Secretary of State for Foreign Affairs.

DANIEL WEBSTER.

TO THE PRESIDENT.

*Mr. Webster to Mr. Everett.*

Department of State, Washington, March 28, 1843.

SIR, — I transmit to you with this despatch a message from the President of the United States to Congress, communicated on the 27th of February, and accompanied by a report made from this department to the President, of the substance of a despatch from Lord Aberdeen to Mr. Fox, which was by him read to me on the 24th ultimo.

Lord Aberdeen's despatch, as you will perceive, was occasioned by a passage in the President's message to Congress at the opening of its late session. The particular passage is not stated by his Lordship; but no mistake will be committed, it is presumed, in considering it to be that which was quoted by Sir Robert Peel and other gentlemen in the debate in the House of Commons, on the answer to the Queen's speech, on the 3d of February.

The President regrets that it should have become necessary to hold a diplomatic correspondence upon the subject of a communication from the head of the executive government to the legislature, drawing after it, as in this case, the further necessity of referring to observations made by persons in high and responsible stations, in debates of public bodies. Such a necessity, however, seems to be unavoidably incurred in consequence of Lord Aberdeen's despatch; for, although the President's recent message may be regarded as a clear exposition of his opinions on the subject, yet a just respect for her Majesty's government, and a disposition to meet all questions with promptness, as well as with frankness and candor, require that a formal answer should be made to that despatch.

The words in the message at the opening of the session which are complained of, it is supposed, are the following: "Although Lord Aberdeen, in his correspondence with the American envoys at London, expressly disclaimed all right to detain an American ship on the high seas, even if found with a

cargo of slaves on board, and restricted the British pretension to a mere claim to visit and inquire, yet it could not well be discerned by the executive of the United States how such visit and inquiry could be made without detention on the voyage, and consequent interruption to the trade. It was regarded as the right of search, presented only in a new form and expressed in different words; and I therefore felt it to be my duty distinctly to declare, in my annual message to Congress, that no such concession could be made, and that the United States had both the will and the ability to enforce their own laws, and to protect their flag from being used for purposes wholly forbidden by those laws, and obnoxious to the moral censure of the world."

This statement would tend, as Lord Aberdeen thinks, to convey the supposition, not only that the question of the right of search had been disavowed by the British plenipotentiary at Washington, but that Great Britain had made concessions on that point.

Lord Aberdeen is entirely correct in saying that the claim of a right of search was not discussed during the late negotiation, and that neither was any concession required by this government, nor made by that of her Britannic Majesty.

The eighth and ninth articles of the treaty of Washington constitute a mutual stipulation for concerted efforts to abolish the African slave-trade. The stipulation, it may be admitted, has no other effects on the pretensions of either party than this: Great Britain had claimed as a *right* that which this government could not admit to be a *right*, and, in the exercise of a just and proper spirit of amity, a mode was resorted to which might render unnecessary both the assertion and the denial of such claim.

There probably are those who think that what Lord Aberdeen calls a right of visit, and which he attempts to distinguish from the right of search, ought to have been expressly acknowledged by the government of the United States. At the same time, there are those on the other side who think that the formal surrender of such right of visit should have been demanded by the United States as a precedent condition to the negotiation for treaty stipulations on the subject of the African slave-trade. But the treaty neither asserts the claim in terms, nor

denies the claim in terms; it neither formally insists upon it, nor formally renounces it. Still, the whole proceeding shows that the object of the stipulation was to avoid such differences and disputes as had already arisen, and the serious practical evils and inconveniences which, it cannot be denied, are always liable to result from the practice which Great Britain had asserted to be lawful. These evils and inconveniences had been acknowledged by both governments. They had been such as to cause much irritation, and to threaten to disturb the amicable sentiments which prevailed between them. Both governments were sincerely desirous of abolishing the slave-trade; both governments were equally desirous of avoiding occasion of complaint by their respective citizens and subjects; and both governments regarded the eighth and ninth articles as effectual for their avowed purpose, and likely, at the same time, to preserve all friendly relations, and to take away causes of future individual complaints. The treaty of Washington was intended to fulfil the obligations entered into by the treaty of Ghent. It stands by itself; is clear and intelligible. It speaks its own language, and manifests its own purpose. It needs no interpretation, and requires no comment. As a fact, as an important occurrence in national intercourse, it may have important bearings on existing questions respecting the public law; and individuals, or perhaps governments, may not agree as to what these bearings really are. Great Britain has discussions, if not controversies, with other great European states upon the subject of visit or search. These states will naturally make their own commentary on the treaty of Washington, and draw their own inferences from the fact that such a treaty has been entered into. Its stipulations, in the mean time, are plain, explicit, and satisfactory to both parties, and will be fulfilled on the part of the United States, and, it is not doubted, on the part of Great Britain also, with the utmost good faith.

Holding this to be the true character of the treaty, I might, perhaps, excuse myself from entering into the consideration of the grounds of that claim of a right to visit merchant-ships for certain purposes, in time of peace, which Lord Aberdeen asserts for the British government, and declares that it can never surrender. But I deem it right, nevertheless, and no more than justly respectful toward the British government, not to leave the point without remark.



In his recent message to Congress, the President, referring to the language of Lord Aberdeen in his note to Mr. Everett of the 20th of December, 1841, and in his late despatch to Mr. Fox, says: "These declarations may well lead us to doubt whether the apparent difference between the two governments is not rather one of definition than of principle."

Lord Aberdeen, in his note to you of the 20th of December, says: "The undersigned again renounces, as he has already done in the most explicit terms, any right on the part of the British government to search American vessels in time of peace. The right of search, except when specially conceded by treaty, is a pure belligerent right, and can have no existence on the high seas during peace. The undersigned apprehends, however, that the right of search is not confined to the verification of the nationality of the vessel, but also extends to the object of the voyage and the nature of the cargo. The sole purpose of the British cruisers is to ascertain whether the vessels they meet with are really American or not. The right asserted has, in truth, no resemblance to the right of search, either in principle or practice. It is simply a right to satisfy the party who has a legitimate interest in knowing the truth, that the vessel actually is what her colors announce. This right we concede as freely as we exercise. The British cruisers are not instructed to detain American vessels under any circumstances whatever; on the contrary, they are ordered to abstain from all interference with them, be they slavers or otherwise. But where reasonable suspicion exists that the American flag has been abused for the purpose of covering the vessel of another nation, it would appear scarcely credible, had it not been made manifest by the repeated protestations of their representative, that the government of the United States, which has stigmatized and abolished the trade itself, should object to the adoption of such means as are indispensably necessary for ascertaining the truth."

And in his recent despatch to Mr. Fox his Lordship further says: "That the President might be assured that Great Britain would always respect the just claims of the United States. That the British government made no pretension to interfere in any manner whatever, either by detention, visit, or search, with vessels of the United States, known or believed to be such but that it still maintained, and would exercise when

necessary, its own right to ascertain the genuineness of any flag which a suspected vessel might bear; that if, in the exercise of this right, either from involuntary error, or in spite of every precaution, loss or injury should be sustained, a prompt reparation would be afforded; but that it should entertain, for a single instant, the notion of abandoning the right itself, would be quite impossible."

This, then, is the British claim, as asserted by her Majesty's government.

In his remarks in the speech already referred to, in the House of Commons, the first minister of the crown said: "There is nothing more distinct than the right of visit is from the right of search. Search is a belligerent right, and not to be exercised in time of peace, except when it has been conceded by treaty. The right of search extends not only to the vessel, but to the cargo also. The right of visit is quite distinct from this, though the two are often confounded. The right of search, with respect to American vessels, we entirely and utterly disclaim; nay, more, if we knew that an American vessel were furnished with all the materials requisite for the slave-trade, if we knew that the decks were prepared to receive hundreds of human beings within a space in which life is almost impossible, still we should be bound to let that American vessel pass on. But the right we claim is to know whether a vessel pretending to be American, and hoisting the American flag, be *bonâ fide* American."

The President's message is regarded as holding opinions in opposition to these.

The British government, then, supposes that the right of visit and the right of search are essentially distinct in their nature, and that this difference is well known and generally acknowledged; that the difference between them consists in their different objects and purposes: one, the visit, having for its object nothing but to ascertain the nationality of the vessel; the other, the search, by an inquisition, not only into the nationality of the vessel, but the nature and object of her voyage, and the true ownership of her cargo.

The government of the United States, on the other hand, maintains that there is no such well-known and acknowledged, nor, indeed, any broad and generic difference between what has

been usually called visit, and what has been usually called search; that the right of visit, to be effectual, must come, in the end, to include search; and thus to exercise, in peace, an authority which the law of nations only allows in times of war. If such well-known distinction exists, where are the proofs of it? What writers of authority on public law, what adjudications in courts of admiralty, what public treaties, recognize it? No such recognition has presented itself to the government of the United States; but, on the contrary, it understands that public writers, courts of law, and solemn treaties have, for two centuries, used the words "visit" and "search" in the same sense. What Great Britain and the United States mean by the "right of search," in its broadest sense, is called by Continental writers and jurists by no other name than the "right of visit." Visit, therefore, as it has been understood, implies not only a right to inquire into the national character, but to detain the vessel, to stop the progress of the voyage, to examine papers, to decide on their regularity and authenticity, and to make inquisition on board for enemy's property, and into the business which the vessel is engaged in. In other words, it describes the entire right of belligerent visitation and search. Such a right is justly disclaimed by the British government in time of peace. They, nevertheless, insist on a right which they denominate a right of visit, and by that word describe the claim which they assert. It is proper, and due to the importance and delicacy of the questions involved, to take care that, in discussing them, both governments understand the terms which may be used in the same sense. If, indeed, it should be manifest that the difference between the parties is only verbal, it might be hoped that no harm would be done; but the government of the United States thinks itself not justly chargeable with excessive jealousy, or with too great scrupulosity in the use of words, in insisting on its opinion that there is no such distinction as the British government maintains between visit and search; and that there is no right to visit in time of peace, except in the execution of revenue laws or other municipal regulations, in which cases the right is usually exercised near the coast, or within the marine league, or where the vessel is justly suspected of violating the law of nations by piratical aggression; but, wherever exercised, it is a right of search.

Nor can the United States government agree that the term "right" is justly applied to such exercise of power as the British government thinks it indispensable to maintain in certain cases. The right asserted is a right to ascertain whether a merchant-vessel is justly entitled to the protection of the flag which she may happen to have hoisted, such vessel being in circumstances which render her liable to the suspicion, first, that she is not entitled to the protection of the flag; and secondly, that, if not entitled to it, she is, either by the law of England, as an English vessel, or under the provisions of treaties with certain European powers, subject to the supervision and search of British cruisers. And yet Lord Aberdeen says, "that if, in the exercise of this right, either from involuntary error, or in spite of every precaution, loss or injury should be sustained, a prompt reparation would be afforded."

It is not easy to perceive how these consequences can be admitted justly to flow from the fair exercise of a clear right. If injury be produced by the exercise of a right, it would seem strange that it should be repaired, as if it had been the effect of a wrongful act. The general rule of law certainly is, that, in the proper and prudent exercise of his own right, no one is answerable for undesigned injuries. It may be said that the right is a qualified right; that it is a right to do certain acts of force at the risk of turning out to be wrongdoers, and of being made answerable for all damages. But such an argument would prove every trespass to be matter of right, subject only to just responsibility. If force were allowed to such reasoning in other cases, it would follow that an individual's right in his own property was hardly more than a well-founded claim for compensation if he should be deprived of it. But compensation is that which is rendered for injury, and is not commutation, or forced equivalent, for acknowledged rights. It implies, at least in its general interpretation, the commission of some wrongful act.

But, without pressing further these inquiries into the accuracy and propriety of definitions and the use of words, I proceed to draw your attention to the thing itself, and to consider what these acts are which the British government insists its cruisers have a right to perform, and to what consequences they naturally and necessarily tend. An eminent member of

## Diplomatic Papers

the House of Commons \* thus states the British claim, and his statement is acquiesced in and adopted by the first minister of the crown:—

“The claim of this country is for the right of our cruisers to ascertain whether a merchant-vessel is justly entitled to the protection of the flag which she may happen to have hoisted, such vessel being in circumstances which rendered her liable to the suspicion, first, that she was not entitled to the protection of the flag; and, secondly, if not entitled to it, she was, either under the law of nations or the provisions of treaties, subject to the supervision and control of our cruisers.”

Now the question is, *By what means* is this ascertainment to be effected?

As we understand the general and settled rules of public law, in respect to ships of war sailing under the authority of their government, “to arrest pirates and other public offenders,” there is no reason why they may not approach any vessels descried at sea for the purpose of ascertaining their real characters. Such a right of approach seems indispensable for the fair and discreet exercise of their authority; and the use of it cannot be justly deemed indicative of any design to insult or injure those they approach, or to impede them in their lawful commerce. On the other hand, it is as clear that no ship is, under such circumstances, bound to lie by or wait the approach of any other ship. She is at full liberty to pursue her voyage in her own way, and to use all necessary precautions to avoid any suspected sinister enterprise or hostile attack. Her right to the free use of the ocean is as perfect as that of any other ship. An entire equality is presumed to exist. She has a right to consult her own safety, but at the same time she must take care not to violate the rights of others. She may use any precautions dictated by the prudence or fears of her officers, either as to delay, or the progress or course of her voyage; but she is not at liberty to inflict injuries upon other innocent parties simply because of conjectural dangers.

But if the vessel thus approached attempts to avoid the vessel approaching, or does not comply with her commander's order to send him her papers for his inspection, nor consent to be vis-

\* Mr. Wood, now Sir Charles Wood, Chancellor of the Exchequer.

ited or detained, what is next to be done? Is force to be used? And if force be used, may that force be lawfully repelled? These questions lead at once to the elemental principle, the essence of the British claim. Suppose the merchant-vessel be in truth an American vessel engaged in lawful commerce, and that she does not choose to be detained. Suppose she resists the visit. What is the consequence? In all cases in which the belligerent right of visit exists, resistance to the exercise of that right is regarded as just cause of condemnation, both of vessel and cargo. Is that penalty, or what other penalty, to be incurred by resistance to visit in time of peace? Or suppose that force be met by force, gun returned for gun, and the commander of the cruiser, or some of his seamen, be killed; what description of offence will have been committed? It would be said, in behalf of the commander of the cruiser, that he mistook the vessel for a vessel of England, Brazil, or Portugal; but does this mistake of his take away from the American vessel the right of self-defence? The writers of authority declare it to be a principle of natural law, that the privilege of self-defence exists against an assailant who mistakes the object of his attack for another whom he had a right to assail.

Lord Aberdeen cannot fail to see, therefore, what serious consequences might ensue, if it were to be admitted that this claim to visit, in time of peace, however limited or defined, should be permitted to exist as a strict matter of right; for if it exist as a right, it must be followed by corresponding duties and obligations, and the failure to fulfil those duties would naturally draw penal consequences after it, till ere long it would become, in truth, little less, or little other, than the belligerent right of search.

If visit or visitation be not accompanied by search, it will be in most cases merely idle. A sight of papers may be demanded, and papers may be produced. But it is known that slave-traders carry false papers, and different sets of papers. A search for other papers, then, must be made where suspicion justifies it, or else the whole proceeding would be nugatory. In suspicious cases, the language and general appearance of the crew are among the means of ascertaining the national character of the vessel. The cargo on board, also, often indicates the country from which she comes. Her log-books, showing the previous

course and events of her voyage, her internal fitting up and equipment, are all evidences for her, or against her, on her allegation of character. These matters, it is obvious, can only be ascertained by rigorous search.

It may be asked, If a vessel may not be called on to show her papers, why does she carry papers? No doubt she may be called on to show her papers; but the question is, Where, when, and by whom? Not in time of peace, on the high seas, where her rights are equal to the rights of any other vessel, and where none has a right to molest her. The use of her papers is, in time of war, to prove her neutrality when visited by belligerent cruisers; and in both peace and war, to show her national character, and the lawfulness of her voyage, in those ports of other countries to which she may proceed for purposes of trade.

It appears to the government of the United States, that the view of this whole subject which is the most naturally taken is also the most legal, and most in analogy with other cases. British cruisers have a right to detain British merchantmen for certain purposes; and they have a right, acquired by treaty, to detain merchant-vessels of several other nations for the same purposes. But they have no right at all to detain an American merchant-vessel. This Lord Aberdeen admits in the fullest manner. Any detention of an American vessel by a British cruiser is therefore a wrong, a trespass; although it may be done under the belief that she was a British vessel, or that she belonged to a nation which had conceded the right of such detention to the British cruisers, and the trespass therefore an involuntary trespass. If a ship of war, in thick weather, or in the darkness of the night, fire upon and sink a neutral vessel, under the belief that she is an enemy's vessel, this is a trespass, a mere wrong; and cannot be said to be an act done under any right, accompanied by responsibility for damages. So if a civil officer on land have process against one individual, and through mistake arrest another, this arrest is wholly tortious; no one would think of saying that it was done under any lawful exercise of authority, subject only to responsibility, or that it was any thing but a mere trespass, though an unintentional trespass. The municipal law does not undertake to lay down beforehand any rule for the government of such cases; and as little, in the

opinion of the government of the United States, does the public law of the world lay down beforehand any rule for the government of cases of involuntary trespasses, detentions, and injuries at sea; except that in both classes of cases law and reason make a distinction between injuries committed through mistake and injuries committed by design; the former being entitled to fair and just compensation, the latter demanding exemplary damages, and sometimes personal punishment. The government of the United States has frequently made known its opinion, which it now repeats, that the practice of detaining American vessels, though subject to just compensation if such detention afterward turn out to have been without good cause, however guarded by instructions, or however cautiously exercised, necessarily leads to serious inconvenience and injury. The amount of loss cannot be always well ascertained. Compensation, if it be adequate in the amount, may still necessarily be long delayed; and the pendency of such claims always proves troublesome to the governments of both countries. These detentions, too, frequently irritate individuals, cause warm blood, and produce nothing but ill effects on the amicable relations existing between the countries. We wish, therefore, to put an end to them, and to avoid all occasions for their recurrence.

On the whole, the government of the United States, while it has not conceded a mutual right of visit or search, as has been done by the parties to the quintuple treaty of December, 1841, does not admit that, by the law and practice of nations, there is any such thing as a right of visit, distinguished by well-known rules and definitions from the right of search.

It does not admit that visit of American merchant-vessels by British cruisers is founded on any right, notwithstanding the cruiser may suppose such vessel to be British, Brazilian, or Portuguese. We cannot but see that the detention and examination of American vessels by British cruisers has already led to consequences, and fear that, if continued, it would still lead to further consequences, highly injurious to the lawful commerce of the United States.

At the same time, the government of the United States fully admits that its flag can give no immunity to pirates, nor to any other than to regularly documented American vessels. It was



upon this view of the whole case, and with a firm conviction of the truth of these sentiments, that it cheerfully assumed the duties contained in the treaty of Washington; in the hope that thereby causes of difficulty and difference might be altogether removed, and that the two powers might be enabled to act concurrently, cordially, and effectually for the suppression of a traffic which both regard as a reproach upon the civilization of the age, and at war with every principle of humanity and every Christian sentiment.

The government of the United States has no interest, nor is it under the influence of any opinions, which should lead it to desire any derogation of the just authority and rights of maritime power. But in the convictions which it entertains, and in the measures which it has adopted, it has been governed solely by a sincere desire to support those principles and those practices which it believes to be conformable to public law, and favorable to the peace and harmony of nations.

Both houses of Congress, with a remarkable degree of unanimity, have made express provisions for carrying into effect the eighth article of the treaty. An American squadron will immediately proceed to the coast of Africa. Instructions for its commander are in the course of preparation, and copies will be furnished to the British government; and the President confidently believes, that the cordial concurrence of the two governments in the mode agreed on will be more effectual than any efforts yet made for the suppression of the slave-trade.

You will read this despatch to Lord Aberdeen, and, if he desire it, give him a copy.

I am, Sir, &c., &c.

DANIEL WEBSTER.

EDWARD EVERETT, Esq., &c., &c., &c.

As soon as it became known that the treaty of the 20th of December, 1841 (commonly called the quintuple treaty), had been signed by the five leading European powers, General Cass, at that time United States Minister in France, addressed a letter to M. Guizot, the French Minister for Foreign Affairs, which was of the nature of a protest against the said treaty. A copy of this letter, bearing date the 13th of February, 1842, was transmitted by General Cass to Mr. Webster, in a despatch of the 15th of the same month. To this communication the following reply was returned by Mr. Webster.

*Mr. Webster to General Cass.*

Department of State, Washington, April 5, 1842.

SIR,— By the arrival of the steam-packet at Boston, on the 27th day of last month, I had the honor to receive your several despatches down to the 26th of February. That vessel had been so long delayed on the passage to America, that, after the receipt here of the communications brought by her, there was not time to prepare answers in season to reach Boston before the time fixed for her departure on her return. The most I was able to do was to write a short note to Mr. Everett, to signify that the mail from London had come safe to hand.

The President has been closely attentive to recent occurrences in Europe connected with the treaty of the five powers, of which we received a copy soon after its signature in December. He has witnessed with especial interest the sentiments to which that treaty appears to have given rise in France, as manifested by the debates in the Chambers and the publications of the Parisian press; and he is now officially informed of the course which you felt it to be your duty to take, by the receipt of a copy of the letter addressed by you to M. Guizot, on the 13th of February.

When the President entered upon the duties of his present office in April of last year, a correspondence, as you know, had been long pending, and was still pending, in London, between the minister of the United States and her Britannic Majesty's Secretary of State for Foreign Affairs, respecting certain seizures and detentions of American vessels on the coast of Africa by armed British cruisers, and, generally, respecting the visitation and search of American vessels by such cruisers in those seas. A general approbation of Mr. Stevenson's note to the British minister in regard to this subject was soon after communicated to that gentleman, by the President's order, from this department. The state of things in England in the early part of last summer did not appear to favor a very active continuance or prosecution of this correspondence; and, as Mr. Stevenson had already received permission to return home, no new instructions were addressed to him.

Circumstances occurred, as you are aware, which delayed Mr. Everett's arrival at the post assigned to him as Minister to London: and, in the mean time, in the latter part of August

the correspondence between Lord Palmerston and Mr. Stevenson was, somewhat unexpectedly, resumed, not only on the subject of the African seizures, but on other subjects.

Mr. Everett arrived in London only in the latter part of November; and, in fact, was not presented to the Queen until the 16th day of December. While we were waiting to hear of his appearance at his post, the session of Congress was fast approaching; and, under these circumstances, the President felt it to be his duty to announce, publicly and solemnly, the principles by which the government would be conducted in regard to the visitation and search of ships at sea. As one of the most considerable, commercial, and maritime states of the world, as interested in whatever may in any degree endanger or threaten the common independence of nations upon the seas, it was fit that this government should avow the sentiments which it has heretofore always maintained, and from which it cannot under any circumstances depart. You are quite too well acquainted with the language of the message, on which your letter is bottomed, to need its recital here. It expresses what we consider the true American doctrine, and that which will, therefore, govern us in all future negotiations on the subject.

While instructions for Mr. Everett were in the course of preparation, signifying to him in what manner it might be practicable to preserve the peace of the country consistently with the principles of the message, and yet so as to enable the government to fulfil all its duties, and meet its own wishes, and the wishes of the people of the United States, in regard to the suppression of the African slave-trade, it was announced that the English government had appointed Lord Ashburton as special minister to this country, fully authorized to treat of and definitely settle all matters in difference between the two countries. Of course, no instructions were forwarded to Mr. Everett respecting any of those matters. You perceive, then, that up to the present moment we rest upon the sentiments of the message; beyond the fair scope and purport of that document we are not committed on the one hand or on the other. We reserve to ourselves the undiminished right to receive or to offer propositions on the delicate subjects embraced in the treaty of the five powers, to negotiate thereupon as we may be advised, never departing from our principles, but desirous, while we care-

fully maintain all our rights to the fullest extent, of fulfilling our duties also as one of the maritime states of the world.

The President considers your letter to M. Guizot to have been founded, as it purports, upon the message delivered by him at the opening of the present session of Congress; as intending to give assurance to the French government that the principles of that message would be adhered to, and that the government of the United States would regret to see other nations, especially France, an old ally of the United States and a distinguished champion of the liberty of the seas, agree to any arrangement between other states which might in its influences produce effects unfavorable to this country, and to which arrangement, therefore, this country itself might not be able to accede.

The President directs me to say, that he approves your letter, and warmly commends the motives which animated you in presenting it. The whole subject is now before us here, or will be shortly, as Lord Ashburton arrived last evening; and, without intending to intimate at present what modes of settling this point of difference with England will be proposed, you may receive two proposition as certain:—

1st. That, in the absence of treaty stipulations, the United States will maintain the immunity of merchant-vessels on the seas to the fullest extent which the law of nations authorizes.

2d. That, if the government of the United States, animated by a sincere desire to put an end to the African slave-trade, shall be induced to enter into treaty stipulations for that purpose with any foreign power, those stipulations will be such as shall be strictly limited to their true and single object, such as shall not be embarrassing to innocent commerce, and such, especially, as shall neither imply any inequality, nor can tend in any way to establish such inequality, in their practical operations.

You are requested to communicate these sentiments to M. Guizot, at the same time that you signify to him the President's approbation of your letter; and are requested to add an expression of the sincere pleasure which it gives the President to see the constant sensibility of the French government to the maintenance of the great principles of national equality upon the ocean. Truly sympathizing with that government in abhor-

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rence of the African slave-trade, he appreciates the high motives and the comprehensive views of the true, permanent interest of mankind, which induces it to act with great caution in giving its sanction to a measure susceptible of interpretations, or of modes of execution, which might be in opposition to the independence of nations and the freedom of the seas.

I am, &c.

DANIEL WEBSTER.

LEWIS CASS, ESQ., &c., &c., &c.

# The Treaty of Washington

*President's Message, transmitting the Treaty of Washington to the Senate.\**

TO THE SENATE OF THE UNITED STATES :

I have the satisfaction to communicate to the Senate the results of the negotiations recently had in this city with the British minister special and extraordinary.

These results comprise, —

1st. A treaty to settle and define the boundaries between the territories of the United States and the possessions of her Britannic Majesty in North America, for the suppression of the African slave-trade, and the surrender of criminals, fugitive from justice, in certain cases.

2d. A correspondence on the subject of the interference of the colonial authorities of the British West Indies with American merchant-vessels driven by stress of weather, or carried by violence, into the ports of those colonies.

3d. A correspondence upon the subject of the attack and destruction of the steamboat "Caroline."

4th. A correspondence on the subject of impressment.

If this treaty shall receive the approbation of the Senate, it will terminate a difference respecting boundary, which has long subsisted between the two governments, has been the subject of several ineffectual attempts at settlement, and has sometimes led to great irritation, not without danger of disturbing the existing peace. Both the United States and the States more immediately concerned have entertained no doubt of the valid-

\* This Message was written by Mr. Webster.

ity of the American title to all the territory which has been in dispute; but that title was controverted, and the government of the United States had agreed to make the dispute a subject of arbitration. One arbitration had been actually had, but had failed to settle the controversy; and it was found, at the commencement of last year, that a correspondence had been in progress between the two governments for a joint commission, with an ultimate reference to an umpire or arbitrator, with authority to make a final decision. That correspondence, however, had been retarded by various occurrences, and had come to no definite result when the special mission of Lord Ashburton was announced. This movement on the part of England afforded, in the judgment of the executive, a favorable opportunity for making an attempt to settle this long-existing controversy by some agreement or treaty, without further reference to arbitration. It seemed entirely proper, that, if this purpose were entertained, consultation should be had with the authorities of the States of Maine and Massachusetts. Letters, therefore, of which copies are herewith communicated, were addressed to the governors of those States, suggesting that commissioners should be appointed by each of them, respectively, to repair to this city and confer with the authorities of this government on a line by agreement or compromise, with its equivalents and compensations. This suggestion was met by both States in a spirit of candor and patriotism, and promptly complied with. Four commissioners on the part of Maine, and three on the part of Massachusetts, all persons of distinction and high character, were duly appointed and commissioned, and lost no time in presenting themselves at the seat of the government of the United States. These commissioners have been in correspondence with this government, during the period of the discussions; have enjoyed its confidence and freest communications; have aided the general object with their counsel and advice; and, in the end, have unanimously signified their assent to the line proposed in the treaty.

Ordinarily, it would be no easy task to reconcile and bring together such a variety of interests in a matter in itself difficult and perplexed; but the efforts of the government, in attempting to accomplish this desirable object, have been seconded and sustained by a spirit of accommodation and conciliation on the

*Lord Ashburton*

From the Painting by G. P. A. Healy, Department of  
State, Washington











A. Wilson & Co. Boston.



part of the States concerned, to which much of the success of these efforts is to be ascribed.

Connected with the settlement of the line of the northeastern boundary, so far as it respects the States of Maine and Massachusetts, is the continuation of that line along the Highlands to the northwesternmost head of Connecticut River. Which of the sources of that stream is entitled to this character has been matter of controversy, and is of some interest to the State of New Hampshire. The King of the Netherlands decided the main branch to be the northwesternmost head of the Connecticut. This did not satisfy the claim of New Hampshire. The line agreed to in the present treaty follows the Highlands to the head of Hall's Stream, and thence down that river, embracing the whole claim of New Hampshire, and establishing her title to one hundred thousand acres of territory more than she would have had by the decision of the King of the Netherlands.

By the treaty of 1783, the line is to proceed down the Connecticut River to the forty-fifth degree of north latitude, and thence west by that parallel till it strikes the St. Lawrence. Recent examinations having ascertained that the line heretofore received as the true line of latitude between those points was erroneous, and that the correction of this error would not only leave on the British side a considerable tract of territory heretofore supposed to belong to the States of Vermont and New York, but also Rouse's Point, the site of a military work of the United States, it has been regarded as an object of importance, not only to establish the rights and jurisdiction of those States up to the line to which they have been considered to extend, but also to comprehend Rouse's Point within the territory of the United States. The relinquishment by the British government of all the territory south of the line heretofore considered to be the true line, has been obtained; and the consideration for this relinquishment is to enure, by the provisions of the treaty, to the States of Maine and Massachusetts.

The line of boundary, then, from the source of the St. Croix to the St. Lawrence, as far as Maine and Massachusetts are concerned, is fixed by their own consent, and for considerations satisfactory to them; the chief of these considerations being the privilege of transporting the lumber and agricultural products grown and raised in Maine on the waters of the St. John and

its tributaries down that river to the ocean, free from imposition or disability. The importance of this privilege, perpetual in its terms, to a country covered at present by pine forests of great value, and much of it capable hereafter of agricultural improvement, is not a matter upon which the opinion of intelligent men is likely to be divided.

So far as New Hampshire is concerned, the treaty secures all that she requires; and New York and Vermont are quieted to the extent of their claim and occupation. The difference which would be made in the northern boundary of these two States, by correcting the parallel of latitude, may be seen on Tanner's maps (1836), new atlas, maps Nos. 6 and 9.

From the intersection of the forty-fifth degree of north latitude with the St. Lawrence, and along that river and the lakes to the water communication between Lake Huron and Lake Superior, the line was definitely agreed on, by the commissioners of the two governments, under the sixth article of the treaty of Ghent. But between this last-mentioned point and the Lake of the Woods, the commissioners acting under the seventh article of that treaty found several matters of disagreement, and therefore made no joint report to their respective governments. The first of these was Sugar Island, or St. George's Island, lying in St. Mary's River, or the water communication between Lakes Huron and Superior. By the present treaty, this island is embraced in the territories of the United States. Both from soil and position, it is regarded as of much value.

Another matter of difference was the manner of extending the line from the point at which the commissioners arrived, north of Ile Royale, in Lake Superior, to the Lake of the Woods. The British commissioner insisted upon proceeding to Fond du Lac, at the southwest angle of the lake, and thence by the River St. Louis to the Rainy Lake. The American commissioner supposed the true course to be, to proceed by way of the Dog River. Attempts were made to compromise this difference, but without success. The details of these proceedings are found at length in the printed separate reports of the commissioners.

From the imperfect knowledge of this remote country at the date of the treaty of peace, some of the descriptions in that treaty do not harmonize with its natural features, as now ascer-

tained. "Long Lake" is nowhere to be found under that name. There is reason for supposing, however, that the sheet of water intended by that name is the estuary at the mouth of Pigeon River. The present treaty, therefore, adopts that estuary and river, and afterward pursues the usual route across the height of land, by the various portages and small lakes, till the line reaches Rainy Lake; from which the commissioners agreed on the extension of it to its termination, in the northwest angle of the Lake of the Woods. The region of country on and near the shore of the lake, between Pigeon River on the north and Fond du Lac and the River St. Louis on the south and west, considered valuable as a mineral region, is thus included within the United States. It embraces a territory of four millions of acres, northward of the claim set up by the British commissioner under the treaty of Ghent. From the height of land at the head of Pigeon River, westerly to the Rainy Lake, the country is understood to be of little value, being described by surveyors, and marked on the map, as a region of rock and water.

From the northwest angle of the Lake of the Woods, which is found to be in latitude  $45^{\circ} 23' 55''$  north, existing treaties require the line to run due south to its intersection with the forty-fifth parallel, and thence along that parallel to the Rocky Mountains.

After sundry informal communications with the British minister upon the subject of the claims of the two countries to territory west of the Rocky Mountains, so little probability was found to exist of coming to any agreement on that subject at present, that it was not thought expedient to make it one of the subjects of formal negotiation, to be entered upon between this government and the British minister, as part of his duties under his special mission.

By the treaty of 1783, the line of division along the rivers and lakes, from the place where the forty-fifth parallel of north latitude strikes the St. Lawrence, to the outlet of Lake Superior, is invariably to be drawn through the middle of such waters, and not through the middle of their main channels. Such a line, if extended according to the literal terms of the treaty, would, it is obvious, occasionally intersect islands. The manner in which the commissioners of the two governments dealt with this difficult subject may be seen in their reports. But where the line,



thus following the middle of the river or watercourse, did not meet with islands, yet it was liable sometimes to leave the only practicable navigable channel altogether on one side. The treaty made no provision for the common use of the waters by the citizens and subjects of both countries.

It has happened, therefore, in a few instances, that the use of the river in particular places would be greatly diminished to one party or the other, if, in fact, there was not a choice in the use of channels and passages. Thus, at the Long Sault in the St. Lawrence, a dangerous passage, practicable only for boats, the only safe run is between the Long Sault Islands and Barnhart's Island, all which belong to the United States on one side, and the American shore on the other. On the other hand, by far the best passage for vessels of any depth of water from Lake Erie into the Detroit River is between Bois Blanc, a British island, and the Canadian shore. So, again, there are several channels or passages, of different degrees of facility and usefulness, between several islands in the River St. Clair, at or near its entry into the lake of that name. In these three cases, the treaty provides that all the several passages and channels shall be free and open to the use of the citizens and subjects of both parties.

The treaty obligations subsisting between the two countries for the suppression of the African slave-trade, and the complaints made to this government within the last three or four years, many of them but too well founded, of the visitation, seizure, and detention of American vessels on that coast by British cruisers, could not but form a delicate and highly important part of the negotiations which have now been held.

The early and prominent part which the government of the United States has taken for the abolition of this unlawful and inhuman traffic is well known. By the tenth article of the treaty of Ghent, it is declared that the traffic in slaves is irreconcilable with the principles of humanity and justice, and that both his Majesty and the United States are desirous of continuing their efforts to promote its entire abolition; and it is thereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object. The government of the United States has, by law, declared the African slave-trade piracy; and at its suggestion other nations have made

similar enactments. It has not been wanting in honest and zealous efforts, made in conformity with the wishes of the whole country, to accomplish the entire abolition of the traffic in slaves upon the African coast; but these efforts, and those of other countries directed to the same end, have proved, to a considerable degree, unsuccessful. Treaties are known to have been entered into some years ago between England and France, by which the former power, which usually maintains a large naval force on the African station, was authorized to seize, and bring in for adjudication, vessels found engaged in the slave-trade under the French flag.

It is known that, in December last, a treaty was signed in London by the representatives of England, France, Russia, Prussia, and Austria, having for its professed object a strong and united effort of the five powers to put an end to the traffic. This treaty was not officially communicated to the government of the United States, but its provisions and stipulations are supposed to be accurately known to the public. It is understood to be not yet ratified on the part of France.

No application or request has been made to this government to become party to this treaty; but the course it might take in regard to it has excited no small degree of attention and discussion in Europe, as the principle upon which it is founded, and the stipulations which it contains, have caused warm animadversions and great political excitement.

In my message at the commencement of the present session of Congress, I endeavored to state the principles which this government supports respecting the right of search and the immunity of flags. Desirous of maintaining those principles fully, at the same time that existing obligations should be fulfilled, I have thought it most consistent with the honor and dignity of the country, that it should execute its own laws, and perform its own obligations, by its own means and its own power. The examination or visitation of the merchant-vessels of one nation by the cruisers of another, for any purpose except those known and acknowledged by the law of nations, under whatever restraints or regulations it may take place, may lead to dangerous results. It is far better, by other means, to supersede any supposed necessity, or any motive, for such examination or visit. Interference with a merchant-vessel by an armed cruiser

is always a delicate proceeding, apt to touch the point of national honor, as well as to affect the interests of individuals. It has been thought, therefore, expedient, not only in accordance with the stipulations of the treaty of Ghent, but at the same time as removing all pretext on the part of others for violating the immunities of the American flag upon the seas, as they exist and are defined by the law of nations, to enter into the articles now submitted to the Senate.

The treaty which I now submit to you proposes no alteration, mitigation, or modification of the rules of the law of nations. It provides simply that each of the two governments shall maintain on the coast of Africa a sufficient squadron to enforce, separately and respectively, the laws, rights, and obligations of the two countries for the suppression of the slave-trade.

Another consideration of great importance has recommended this mode of fulfilling the duties and obligations of the country. Our commerce along the western coast of Africa is extensive, and supposed to be increasing. There is reason to think that, in many cases, those engaged in it have met with interruptions and annoyances, caused by the jealousy and instigation of rivals engaged in the same trade. Many complaints on this subject have reached the government. A respectable naval force on the coast is the natural resort and security against further occurrences of this kind.

The surrender to justice of persons who, having committed high crimes, seek an asylum in the territories of a neighboring nation, would seem to be an act due to the cause of general justice, and properly belonging to the present state of civilization and intercourse. The British Provinces of North America are separated from the States of the Union by a line of several thousand miles; and along portions of this line the amount of population on either side is quite considerable, while the passage of the boundary is always easy.

Offenders against the law, on the one side, transfer themselves to the other. Sometimes, with great difficulty, they are brought to justice, but very often they wholly escape. A consciousness of immunity, from the power of avoiding justice in this way, instigates the unprincipled and reckless to the commission of offences; and the peace and good neighborhood of the border are consequently often disturbed.

In the case of offenders fleeing from Canada into the United States, the governors of States are often applied to for their surrender; and questions of a very embarrassing nature arise from these applications. It has been thought highly important, therefore, to provide for the whole case by a proper treaty stipulation. The article on the subject in the proposed treaty is carefully confined to such offences as all mankind agree to regard as heinous, and destructive of the security of life and property. In this careful and specific enumeration of crimes the object has been to exclude all political offences, or criminal charges arising from wars or intestine commotions. Treason, misprision of treason, libels, desertion from military service, and other offences of similar character, are excluded.

And, lest some unforeseen inconvenience or unexpected abuse should arise from the stipulation, rendering its continuance, in the opinion of one or both of the parties, not longer desirable, it is left in the power of either to put an end to it at will.

The destruction of the steamboat "Caroline" at Schlosser, four or five years ago, occasioned no small degree of excitement at the time, and became the subject of correspondence between the two governments. That correspondence, having been suspended for a considerable period, was renewed in the spring of the last year, but no satisfactory result having been arrived at, it was thought proper, though the occurrence had ceased to be fresh and recent, not to omit attention to it on the present occasion. It has only been so far discussed, in the correspondence now submitted, as it was accomplished by a violation of the territory of the United States. The letter of the British minister, while attempting to justify that violation upon the ground of a pressing and overruling necessity, admitting, nevertheless, that, even if justifiable, an apology was due for it, and accompanying this acknowledgment with assurances of the sacred regard of his government for the inviolability of national territory, has seemed to me sufficient to warrant forbearance from any further remonstrance against what took place, as an aggression on the soil and territory of the country.

On the subject of the interference of the British authorities in the West Indies, a confident hope is entertained that the correspondence which has taken place, showing the grounds taken by this government, and the engagements entered into by the

British minister, will be found such as to satisfy the just expectation of the people of the United States.

The impressment of seamen from merchant vessels of this country by British cruisers, although not practised in time of peace, and therefore not at present a productive cause of difference and irritation, has, nevertheless, hitherto been so prominent a topic of controversy, and is so likely to bring on renewed contentions at the first breaking out of a European war, that it has been thought the part of wisdom now to take it into serious and earnest consideration. The letter from the Secretary of State to the British minister explains the grounds which the government has assumed, and the principles which it means to uphold. For the defence of these grounds, and the maintenance of these principles, the most perfect reliance is placed on the intelligence of the American people, and on their firmness and patriotism, in whatever touches the honor of the country, or its great and essential interest.

JOHN TYLER.

Washington, August 11, 1842.

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

[A PROCLAMATION.]

Whereas, a treaty between the United States of America and her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, was concluded and signed by their plenipotentiaries, at Washington, on the ninth day of August, one thousand eight hundred and forty-two, which treaty is, word for word, as follows:—

*A Treaty to settle and define the Boundaries between the Territories of the United States and the Possessions of her Britannic Majesty in North America; for the final Suppression of the African Slave-trade; and for the giving up of Criminals, fugitive from Justice, in certain Cases.*

Whereas certain portions of the line of boundary between the United States of America and the British dominions in North America, described in the second article of the treaty of peace of 1783, have not yet been ascertained and determined, notwithstanding the repeated attempts which have been hereto-

fore made for that purpose; and whereas it is now thought to be for the interest of both parties, that, avoiding further discussion of their respective rights arising in this respect under the said treaty, they should agree on a conventional line in said portions of the said boundary, such as may be convenient to both parties, with such equivalents and compensations as are deemed just and reasonable; and whereas, by the treaty concluded at Ghent, on the 24th day of December, 1814, between the United States and his Britannic Majesty, an article was agreed to and inserted, of the following tenor, viz.: "ARTICLE 10. Whereas the traffic in slaves is irreconcilable with the principles of humanity and justice; and whereas both his Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object"; and whereas, notwithstanding the laws which have at various times been passed by the two governments, and the efforts made to suppress it, that criminal traffic is still prosecuted and carried on; and whereas the United States of America and her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, are determined that, so far as may be in their power, it shall be effectually abolished; and whereas it is found expedient for the better administration of justice and the prevention of crime within the territories and jurisdiction of the two parties, respectively, that persons committing the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up: the United States of America and her Britannic Majesty, having resolved to treat on these several subjects, have for that purpose appointed their respective plenipotentiaries to negotiate and conclude a treaty; that is to say, the President of the United States has, on his part, furnished with full powers Daniel Webster, Secretary of State of the United States, and her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, has, on her part, appointed the Right Honorable Alexander Lord Ashburton, a peer of the said United Kingdom, a member of her Majesty's most honorable Privy Council, and her Majesty's Minister Plenipotentiary on a special mission to the United States, who, after a reciprocal communication of their respective full powers, have agreed to and signed the following articles:—

## ARTICLE I.

It is hereby agreed and declared that the line of boundary shall be as follows: Beginning at the monument at the source of the River St. Croix, as designated and agreed to by the commissioners under the fifth article of the treaty of 1794, between the governments of the United States and Great Britain; thence north, following the exploring line run and marked by the surveyors of the two governments in the years 1817 and 1818, under the fifth article of the treaty of Ghent, to its intersection with the River St. John, and to the middle of the channel thereof; thence up the middle of the main channel of the said River St. John to the mouth of the River St. Francis; thence up the middle of the channel of the said River St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence, southwesterly, in a straight line, to a point on the northwest branch of the River St. John, which point shall be ten miles distant from the main branch of the St. John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the River St. Lawrence from those which fall into the River St. John, then the said point shall be made to recede down the said northwest branch of the River St. John, to a point seven miles in a straight line from the said summit or crest; thence, in a straight line, in a course about south eight degrees west, to the point where the parallel of latitude of forty-six degrees twenty-five minutes north intersects the southwest branch of the St. John; thence, southerly, by the said branch, to the source thereof in the highlands, at the Metjarmette Portage; thence down along the said highlands which divide the waters which empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the head of Hall's Stream; thence down the middle of said stream, till the line thus run intersects the only line of boundary surveyed and marked by Valentine and Collins, previously to the year 1774, as the forty-fifth degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and the British Province of Canada on the other; and

from said point of intersection, west, along the said dividing line, as heretofore known and understood, to the Iroquois or St. Lawrence River.

## ARTICLE II.

It is moreover agreed, that from the place where the joint commissioners terminated their labors under the sixth article of the treaty of Ghent, to wit, at a point in the Neebish Channel, near Muddy Lake, the line shall run into and along the ship-channel between St. Joseph's and St. Tammany Islands, to the division of the channel at or near the head of St. Joseph's Island; thence, turning eastwardly and northwardly, around the lower end of St. George's or Sugar Island, and following the middle of the channel which divides St. George's from St. Joseph's Island; thence up the east Neebish Channel, nearest to St. George's Island, through the middle of Lake George; thence, west of Jonas's Island, into St. Mary's River, to a point in the middle of that river, about one mile above St. George's or Sugar Island, so as to appropriate and assign the said island to the United States; thence, adopting the line traced on the maps by the commissioners, through the River St. Mary and Lake Superior, to a point north of Ile Royale, in said lake, one hundred yards to the north and east of Ile Chapeau, which last-mentioned island lies near the northeastern point of Ile Royale, where the line marked by the commissioners terminates; and from the last-mentioned point, southwesterly, through the middle of the sound between Ile Royale and the northwestern mainland, to the mouth of Pigeon River, and up the said river to and through the North and South Fowl Lakes, to the lakes of the height of land between Lake Superior and the Lake of the Woods; thence along the water communication to Lake Saisaginaga, and through that lake; thence to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix, Little Vermilion Lake, and Lake Namecan, and through the several smaller lakes, straits, or streams connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the commissioners traced the line to the most northwestern point of the Lake of the Woods; thence along the said line to the said most northwestern point, being in latitude forty-nine degrees twenty-three



minutes fifty-five seconds north, and in longitude ninety-five degrees fourteen minutes thirty-eight seconds west from the observatory at Greenwich; thence, according to existing treaties, due south, to its intersection with the forty-ninth parallel of north latitude, and along that parallel to the Rocky Mountains; it being understood that all the water communications and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand Portage, from the shore of Lake Superior to the Pigeon River, as now actually used, shall be free and open to the use of the citizens and subjects of both countries.

#### ARTICLE III.

In order to promote the interests and encourage the industry of all the inhabitants of the countries watered by the River St. John and its tributaries, whether living within the State of Maine or the Province of New Brunswick, it is agreed that where, by the provisions of the present treaty, the River St. John is declared to be the line of boundary, the navigation of the said river shall be free and open to both parties, and shall in no way be obstructed by either; that all the produce of the forest, in logs, lumber, timber, boards, staves, or shingles, or of agriculture, not being manufactured, grown on any of those parts of the State of Maine watered by the River St. John, or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have free access into and through the said river, and its said tributaries having their source within the State of Maine, to and from the seaport at the mouth of the said River St. John, and to and round the falls of the said river, either by boats, rafts, or other conveyance; that when within the Province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said Province; that, in like manner, the inhabitants of the territory of the Upper St. John, determined by this treaty to belong to her Britannic Majesty, shall have free access to and through the river for their produce, in those parts where the said river runs wholly through the State of Maine: *Provided always*, That this agreement shall give no right to either party to interfere with any regulations not inconsistent with the terms of this treaty which the governments, respectively, of Maine or of New Brunswick may make

respecting the navigation of the said river, where both banks thereof shall belong to the same party.

## ARTICLE IV.

All grants of lands heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims, arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall, in like manner, be deemed valid, and be confirmed and quieted by a release to the person entitled thereto of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has hitherto been in dispute between them.

## ARTICLE V.

Whereas, in the course of the controversy respecting the disputed territory on the northeastern boundary, some moneys have been received by the authorities of her Britannic Majesty's Province of New Brunswick, with the intention of preventing depredations on the forests of the said territory, which moneys were to be carried to a fund, called the "Disputed Territory Fund," the proceeds whereof, it was agreed, should be hereafter paid over to the parties interested, in the proportions to be determined by a final settlement of boundaries: it is hereby agreed, that a correct account of all receipts and payments on the said fund shall be delivered to the government of the United States, within six months after the ratification of this treaty; and the proportion of the amount due thereon to the States of Maine and Massachusetts, and any bonds or securities appertaining thereto, shall be paid and delivered over to the government of the United States; and the government of the United States agrees to receive for the use of, and pay over to, the

States of Maine and Massachusetts, their respective portions of said fund; and further, to pay and satisfy said States, respectively, for all claims for expenses incurred by them in protecting the said heretofore disputed territory, and making a survey thereof in 1838; the government of the United States agreeing with the States of Maine and Massachusetts to pay them the further sum of three hundred thousand dollars, in equal moieties, on account of their assent to the line of boundary described in this treaty, and in consideration of the conditions and equivalents received therefor from the government of her Britannic Majesty.

#### ARTICLE VI.

It is furthermore understood and agreed, that for the purpose of running and tracing those parts of the line between the source of the St. Croix and the St. Lawrence River which will require to be run and ascertained, and for marking the residue of said line by proper monuments on the land, two commissioners shall be appointed, one by the President of the United States, by and with the advice and consent of the Senate thereof, and one by her Britannic Majesty; and the said commissioners shall meet at Bangor, in the State of Maine, on the first day of May next, or as soon thereafter as may be, and shall proceed to mark the line above described, from the source of the St. Croix to the River St. John; and shall trace on proper maps the dividing line along said river, and along the River St. Francis, to the outlet of the Lake Pohenagamook; and from the outlet of the said lake they shall ascertain, fix, and mark, by proper and durable monuments on the land, the line described in the first article of this treaty; and the said commissioners shall make to each of their respective governments a joint report or declaration, under their hands and seals, designating such line of boundary, and shall accompany such report or declaration with maps certified by them to be true maps of the new boundary.

#### ARTICLE VII.

It is further agreed, that the channels in the River St. Lawrence, on both sides of the Long Sault Islands, and of Barnhart Island; the channels in the River Detroit, on both sides of the island Bois Blanc, and between that island and both

the American and Canadian shores; and all the several channels and passages between the various islands lying near the junction of the River St. Clair with the lake of that name, shall be equally free and open to the ships, vessels, and boats of both parties.

## ARTICLE VIII.

The parties mutually stipulate that each shall prepare, equip, and maintain in service, on the coast of Africa, a sufficient and adequate squadron, or naval force of vessels, of suitable numbers and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws, rights, and obligations of each of the two countries, for the suppression of the slave-trade; the said squadrons to be independent of each other, but the two governments stipulating, nevertheless, to give such orders to the officers commanding their respective forces, as shall enable them most effectually to act in concert and coöperation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this article; copies of all such orders to be communicated by each government to the other, respectively.

## ARTICLE IX.

Whereas, notwithstanding all efforts which may be made on the coast of Africa for suppressing the slave-trade, the facilities for carrying on that traffic and avoiding the vigilance of cruisers by the fraudulent use of flags, and other means, are so great, and the temptations for pursuing it, while a market can be found for slaves, so strong, as that the desired result may be long delayed, unless all markets be shut against the purchase of African negroes, the parties to this treaty agree that they will unite in all becoming representations and remonstrances with any and all powers within whose dominions such markets are allowed to exist; and that they will urge upon all such powers the propriety and duty of closing such markets effectually, at once and for ever.

## ARTICLE X.

It is agreed that the United States and her Britannic Majesty shall, upon mutual requisitions by them, or their ministers, officers, or authorities, respectively made, deliver up to justice

all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other: provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed; and the respective judges and other magistrates of the two governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

#### ARTICLE XI.

The eighth article of this treaty shall be in force for five years from the date of the exchange of the ratifications, and afterward until one or the other party shall signify a wish to terminate it. The tenth article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

#### ARTICLE XII.

The present treaty shall be duly ratified, and the mutual exchange of ratifications shall take place in London, within six months from the date hereof, or earlier, if possible.

In faith whereof, we, the respective plenipotentiaries, have signed this treaty, and have hereunto affixed our seals.

Done, in duplicate, at Washington, the ninth day of August, anno Domini one thousand eight hundred and forty-two.

DANIEL WEBSTER. [SEAL.]  
ASHBURTON. [SEAL.]

And whereas the said treaty has been duly ratified on both parts, and the respective ratifications of the same having been exchanged, to wit, at London, on the thirteenth day of October, one thousand eight hundred and forty-two, by Edward Everett, Envoy Extraordinary and Minister Plenipotentiary of the United States, and the Right Honorable the Earl of Aberdeen, her Britannic Majesty's principal Secretary of State for Foreign Affairs, on the part of their respective governments:

Now, therefore, be it known, that I, John Tyler, President of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof. In witness [L. s.] whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this tenth day of November, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-seventh.

JOHN TYLER.

By the President:  
DANIEL WEBSTER, *Secretary of State*.

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### *Vote of the Senate on the Final Question of Ratification, &c.*

The treaty, having been communicated to the Senate by the President of the United States, by message of the 11th of August, 1842, was referred, on motion of Mr. Rives, to the Committee on Foreign Relations, of which committee Mr. Rives was chairman; it was reported from the committee without amendment on Monday, the 15th of August, and made the order of the day for Wednesday, the 17th, on which last day it was called up and discussed, as well as on the 19th and 20th. Several propositions to amend having been made and rejected, Mr. Rives, on the day last mentioned, submitted the following resolution:—

“*Resolved* (two thirds of the Senators present concurring), That the Senate advise and consent to the ratification of the treaty to settle and define the boundaries between the territories of the United States and the possessions of her Britannic Majesty in North America; for the final suppression of the African slave-trade; and for the giving up of criminals, fugitive from justice, in certain cases.”

## Diplomatic Papers

The Senate, by unanimous consent, proceeded to consider the said resolution. On the question to agree thereto, it was determined in the affirmative, yeas 39, nays 9.

Those who voted in the affirmative were Messrs. Archer, Barrow, Bates, Bayard, Berrien, Calhoun, Choate, Clayton, Crafts, Crittenden, Cuthbert, Dayton, Evans, Fulton, Graham, Henderson, Huntington, Kerr, King, Mangum, Merrick, Miller, Morehead, Phelps, Porter, Preston, Rives, Sevier, Simmons, Smith of Indiana, Sprague, Tallmadge, Tappan, Walker, White, Woodbridge, Woodbury, Wright, Young.

Those who voted in the negative were Messrs. Allen, Bagby, Benton, Buchanan, Conrad, Linn, Smith of Connecticut, Sturgeon, Williams.

So the said resolution was agreed to.

*Ordered*, That the Secretary lay the said resolution before the President of the United States.

The bill for carrying into effect the treaty of Washington passed the House of Representatives on the 28th of February, 1843, by a vote of 137 yeas to 40 nays, and the Senate on the 2d of March, without a division, having been reported from the Committee on Foreign Relations by Mr. Archer, then chairman of that committee, without amendment.

# Letters to General Cass on the Treaty of Washington\*

*Mr. Webster to General Cass.*

Department of State, Washington, August 29, 1842.

SIR, — You will see by the inclosed the result of the negotiations lately had in this city between this department and Lord Ashburton. The treaty has been ratified by the President and Senate.

In communicating to you this treaty, I am directed by the President to draw your particular attention to those articles which relate to the suppression of the African slave-trade.

After full and anxious consideration of this very delicate subject, the government of the United States has come to the conclusion which you will see expressed in the President's message to the Senate accompanying the treaty.

Without intending or desiring to influence the policy of other governments on this important subject, this government has reflected on what was due to its own character and position, as the leading maritime power on the American continent, left free to make choice of such means for the fulfilment of its duties as it should deem best suited to its dignity. The result of its reflections has been, that it does not concur in measures which, for whatever benevolent purpose they may be adopted, or with whatever care and moderation they may be exercised, have yet a tendency to place the police of the seas in the hands of a single power. It chooses rather to follow its own laws with its own sanction, and to carry them into execution by its own authority. Disposed to act in the spirit of the most cordial con-

\* These letters are subsequent in date to some of those which follow in this volume, but they are inserted here as pertaining to the treaty of Washington.



currence with other nations for the suppression of the African slave-trade, that great reproach of our times, it deems it to be right, nevertheless, that this action, though concurrent, should be independent; and it believes that from this independence it will derive a greater degree of efficiency.

You will perceive, however, that, in the opinion of this government, cruising against slave-dealers on the coast of Africa is not all which is necessary to be done in order to put an end to the traffic. There are markets for slaves, or the unhappy natives of Africa would not be seized, chained, and carried over the ocean into slavery. These markets ought to be shut. And, in the treaty now communicated to you, the high contracting parties have stipulated "that they will unite, in all becoming representations and remonstrances, with any and all powers within whose dominions such markets are allowed to exist; and that they will urge upon all such powers the propriety and duty of closing such markets effectually, at once and for ever."

You are furnished, then, with the American policy in regard to this interesting subject. First, independent but cordially concurrent efforts of maritime states to suppress, as far as possible, the trade on the coast, by means of competent and well-appointed squadrons, to watch the shores and scour the neighboring seas. Secondly, concurrent, becoming remonstrance with all governments who tolerate within their territories markets for the purchase of African negroes. There is much reason to believe that, if other states, professing equal hostility to this nefarious traffic, would give their own powerful concurrence and coöperation to these remonstrances, the general effect would be satisfactory, and that the cupidity and crimes of individuals would at length cease to find both their temptation and their reward in the bosom of Christian states, and in the permission of Christian governments.

It will still remain for each government to revise, execute, and make more effectual its own municipal laws against its subjects or citizens who shall be concerned in, or in any way give aid or countenance to others concerned in this traffic.

You are at liberty to make the contents of this despatch known to the French government.

I have, &c.

DANIEL WEBSTER.

LEWIS CASS, ESQ., &c., &c., &c.

## *Mr. F. Webster to General Cass.*

Department of State, Washington, October 11, 1842.

SIR,— I have to acknowledge the receipt of your despatch of the 17th of September last, requesting permission to return home.

I have submitted the despatch to the President, and am by him directed to say, that although he much regrets that your own wishes should, at this time, terminate your mission to the court of France, where for a long period you have rendered your country distinguished service, in all instances to its honor and to the satisfaction of the government, and where you occupy so favorable a position, from the more than ordinary good intelligence which is understood to subsist between you, personally, and the members of the French government, and from the esteem entertained for you by its illustrious head; yet he cannot refuse your request to return once more to your home and your country, so that you can pay that attention to your personal and private affairs which your long absence and constant employment in the service of your government may now render most necessary.

I have, Sir, to tender you, on behalf of the President, his most cordial good wishes, and am, &c.

FLETCHER WEBSTER, *Acting Secretary of State.*

LEWIS CASS, Esq., &c., &c., &c.

## *Mr. Webster to General Cass.*

Department of State, Washington, November 14, 1842.

SIR,— I have the honor to acknowledge the receipt of your despatch of the 3d of October, brought by the "Great Western," which arrived at New York on the 6th instant.

It is probable you will have embarked for the United States before my communication can now reach you; but as it is thought proper that your letter should be answered, and as circumstances may possibly have occurred to delay your departure, this will be transmitted to Paris in the ordinary way.

Your letter has caused the President considerable concern. Entertaining a lively sense of the respectable and useful manner in which you have discharged, for several years, the duties of an important foreign mission, it occasions him real regret

and pain, that your last official communication should be of such a character as that he cannot give to it his entire and cordial approbation.

It appears to be intended as a sort of protest, a remonstrance, in the form of an official despatch, against a transaction of the government to which you were not a party, in which you had no agency whatever, and for the results of which you were no way answerable. This would seem an unusual and extraordinary proceeding. In common with every other citizen of the republic, you have an unquestionable right to form opinions upon public transactions, and the conduct of public men; but it will hardly be thought to be among either the duties or the privileges of a minister abroad to make formal remonstrances and protests against proceedings of the various branches of the government at home, upon subjects in relation to which he himself has not been charged with any duty or partaken any responsibility.

The negotiation and conclusion of the treaty of Washington were in the hands of the President and Senate. They had acted upon this important subject according to their convictions of duty and of the public interest, and had ratified the treaty. It was a thing done; and although your opinion might be at variance with that of the President and Senate, it is not perceived that you had any cause of complaint, remonstrance, or protest, more than any other citizen who might entertain the same opinion.

In your letter of the 17th of September, requesting your recall, you observe: "The mail by the steam-packet which left Boston the 1st instant has just arrived, and has brought intelligence of the ratification of the treaties recently concluded with Great Britain. All apprehensions, therefore, of any immediate difficulties with that country are at an end, and I do not see that any public interest demands my further residence in Europe. I can no longer be useful here, and the state of my private affairs requires my presence at home. Under these circumstances, I beg you to submit to the President my wish for permission to retire from this mission, and to return to the United States without delay."

As you appeared at that time not to be acquainted with the provisions of the treaty, it was inferred that your desire to re-

turn home proceeded from the conviction *that, inasmuch as all apprehensions of immediate differences with Great Britain were at an end*, you would no longer be useful at Paris. Placing this interpretation on your letter, and believing, as you yourself allege, that your long absence abroad rendered it desirable for you to give some attention to your private affairs in this country, the President lost no time in yielding to your request, and, in doing so, signified to you the sentiments of approbation which he entertained for your conduct abroad. You may, then, well imagine the great astonishment which the declaration contained in your despatch of the 3d of October, that you could no longer remain in France honorably to yourself or advantageously to the country, and that the proceedings of this government had placed you in a false position, from which you could escape only by returning home, created in his mind.

The President perceives not the slightest foundation for these opinions. He cannot see how your usefulness as minister to France should be terminated by the settlement of difficulties and disputes between the United States and Great Britain. You have been charged with no duties connected with the settlement of these questions, or in any way relating to them, beyond the communication to the French government of the President's approbation of your letter of the 13th of February, written without previous instructions from this department. This government is not informed of any other act or proceeding of yours connected with any part of the subject, nor does it know that your official conduct and character have become in any other way connected with the question of the right of search; and that letter having been approved, and the French government having been so informed, the President is altogether at a loss to understand how you can regard yourself as placed in a false position. If the character or conduct of any one was to be affected, it could only be the character and conduct of the President himself. The government has done nothing, most assuredly, to place you in a false position. Representing your country at a foreign court, you saw a transaction about to take place between the government to which you were accredited and another power, which you thought might have a prejudicial effect on the interest of your own country. Thinking, as it is to be presumed, that the case was too pressing to wait for in-

structions, you presented a protest against that transaction, and our government approved your proceeding. This is your only official connection with the whole subject. If after this the President had sanctioned the negotiation of a treaty, and the Senate had ratified it, containing provisions in the highest degree objectionable, however the government might be discredited, your exemption from all blame and censure would have been complete. Having delivered your letter of the 13th of February to the French government, and having received the President's approbation of that proceeding, it is most manifest that you could be in no degree responsible for what should be done afterward, and done by others. The President, therefore, cannot conceive what particular or personal interest of yours was affected by the subsequent negotiation here, or how the treaty, the result of that negotiation, should put an end to your usefulness as a public minister at the court of France, or in any way affect your official character or conduct.

It is impossible not to see that such a proceeding as you have seen fit to adopt might produce much inconvenience, and even serious prejudice, to the public interests. Your opinion is against the treaty, a treaty concluded and formally ratified; and, to support that opinion, while yet in the service of the government, you put a construction on its provisions such as your own government does not put upon them, such as you must be aware the enlightened public of Europe does not put upon them, and such as England herself has not put upon them as yet, so far as we know.

It may become necessary hereafter to publish your letter, in connection with other correspondence of the mission; and although it is not to be presumed that you looked to such publication, because such a presumption would impute to you a claim to put forth your private opinions upon the conduct of the President and Senate, in a transaction finished and concluded, through the imposing form of a public despatch, yet, if published, it cannot be foreseen how far England might hereafter rely on your authority for a construction favorable to her own pretensions, and inconsistent with the interest and honor of the United States. It is certain that you would most sedulously desire to avoid any such attitude. You would be slow to express opinions, in a solemn and official form, favorable to another govern-

ment, and on the authority of which opinions that other government might hereafter found new claims or set up new pretensions. It is for this reason, as well as others, that the President feels so much regret at your desire of placing your construction of the provisions of the treaty, and your objections to those provisions, according to your construction, upon the records of the government.

Before examining the several objections suggested by you, it may be proper to take notice of what you say upon the course of the negotiation. In regard to this, having observed that the national dignity of the United States had not been compromised down to the time of the President's message to the last session of Congress, you proceed to say: "But England then urged the United States to enter into a conventional arrangement, by which we might be pledged to concur with her in measures for the suppression of the slave-trade. Till then we had executed our own laws in our own way. But, yielding to this application, and departing from our former principle of avoiding European combinations upon subjects not American, we stipulated in a solemn treaty, that we would carry into effect our own laws, and fixed the minimum force we would employ for that purpose."

The President cannot conceive how you should have been led to adventure upon such a statement as this. It is but a tissue of mistakes. England did not urge the United States to enter into this conventional arrangement. The United States yielded to no application from England. The proposition for abolishing the slave-trade, as it stands in the treaty, was an American proposition; it originated with the executive government of the United States, which cheerfully assumes all its responsibility. It stands upon it as its own mode of fulfilling its duties, and accomplishing its objects. Nor have the United States departed, in this treaty, in the slightest degree, from their former principles of avoiding European combinations upon subjects not American, because the abolition of the African slave-trade is an American subject as emphatically as it is a European subject; and indeed more so, inasmuch as the government of the United States took the first great steps in declaring that trade unlawful, and in attempting its extinction. The abolition of this traffic is an object of the highest interest to the American people and the American gov-

ernment; and you seem strangely to have overlooked altogether the important fact, that nearly thirty years ago, by the treaty of Ghent, the United States bound themselves, by solemn compact with England, to continue "their efforts to promote its entire abolition," both parties pledging themselves by that treaty to use their best endeavors to accomplish so desirable an object.

Again, you speak of an important concession made to the renewed application of England. But the treaty, let it be repeated, makes no concession to England whatever. It complies with no demand, grants no application, conforms to no request. All these statements, thus by you made, and which are so exceedingly erroneous, seem calculated to hold up the idea, that in this treaty your government has been acting a subordinate, or even a complying part.

The President is not a little startled that you should make such totally groundless assumptions of fact, and then leave a discreditable inference to be drawn from them. He directs me not only to repel this inference as it ought to be repelled, but also to bring to your serious consideration and reflection the propriety of such an assumed narration of facts as your despatch, in this respect, puts forth.

Having informed the department that a copy of the letter of the 24th of August, addressed by me to you, had been delivered to M. Guizot, you proceed to say: "In executing this duty, I felt too well what was due to my government and country to intimate my regret to a foreign power that some declaration had not preceded the treaty, or some stipulation accompanied it, by which the extraordinary pretension of Great Britain to search our ships at all times and in all places, first put forth to the world by Lord Palmerston on the 27th of August, 1841, and on the 13th of October following again peremptorily claimed as a right by Lord Aberdeen, would have been abrogated, as equally incompatible with the laws of nations and with the independence of the United States. I confined myself, therefore, to a simple communication of your letter." It may be true that the British pretension leads necessarily to consequences as broad and general as your statement. But it is no more than fair to state that pretension in the words of the British government itself, and then it becomes matter of consideration and argument how broad and extensive it really is.

The last statement of this pretension, or claim, by the British government, is contained in Lord Aberdeen's note to Mr. Stevenson of the 13th of October, 1841. It is in these words :—

“The undersigned readily admits, that to visit and search American vessels in time of peace, when that right of search is not granted by treaty, would be an infraction of public law, and a violation of national dignity and independence. But no such right is asserted. We sincerely desire to respect the vessels of the United States, but we may reasonably expect to know what it really is that we respect. Doubtless the flag is *primâ facie* evidence of the nationality of the vessel ; and, if this evidence were in its nature conclusive and irrefragable, it ought to preclude all further inquiry. But it is sufficiently notorious that the flags of all nations are liable to be assumed by those who have no right or title to bear them. Mr. Stevenson himself fully admits the extent to which the American flag has been employed for the purpose of covering this infamous traffic. The undersigned joins with Mr. Stevenson in deeply lamenting the evil ; and he agrees with him in thinking that the United States ought not to be considered responsible for this abuse of their flag. But if all inquiry be resisted, even when carried no further than to ascertain the nationality of the vessel, and impunity be claimed for the most lawless and desperate of mankind in the commission of this fraud, the undersigned greatly fears that it may be regarded as something like an assumption of that responsibility which has been deprecated by Mr. Stevenson. . . . .

“The undersigned renounces all pretension on the part of the British government to visit and search American vessels in time of peace. Nor is it as American that such vessels are ever visited ; but it has been the invariable practice of the British navy, and, as the undersigned believes, of all navies in the world, to ascertain by visit the real nationality of merchant-vessels met with on the high seas, if there be good reason to apprehend their illegal character. . . . .

“The undersigned admits, that, if the British cruiser should possess a knowledge of the American character of any vessel, his visitation of such vessel would be entirely unjustifiable. He further admits, that so much respect and honor are due to the American flag, that no vessel bearing it ought to be visited by a British cruiser, except under the most grave suspicions and well-founded doubts of the genuineness of its character.

“The undersigned, although with pain, must add, that if such visit should lead to the proof of the American origin of the vessel, and that she was avowedly engaged in the slave-trade, exhibiting to view the manacles, fetters, and other usual implements of torture, or had even



a number of these unfortunate beings on board, no British officer could interfere further. He might give information to the cruisers of the United States, but it could not be in his own power to arrest or impede the prosecution of the voyage and the success of the undertaking.

“It is obvious, therefore, that the utmost caution is necessary in the exercise of this right claimed by Great Britain. While we have recourse to the necessary, and, indeed, the only means for detecting imposture, the practice will be carefully guarded and limited to cases of strong suspicion. The undersigned begs to assure Mr. Stevenson that the most precise and positive instructions have been issued to her Majesty’s officers on this subject.

Such are the words of the British claim or pretension; and it stood in this form at the delivery of the President’s message to Congress in December last; a message in which you are pleased to say that the British pretension was promptly met and firmly resisted.

I may now proceed to a more particular examination of the objections which you make to the treaty.

You observe that you think a just self-respect required of the government of the United States to demand of Lord Ashburton a distinct renunciation of the British claim to search our vessels previous to entering into any negotiation. The government has thought otherwise; and this appears to be your main objection to the treaty, if, indeed, it be not the only one which is clearly and distinctly stated. The government of the United States supposed that, in this respect, it stood in a position in which it had no occasion to demand any thing, or ask for any thing, of England. The British pretension, whatever it was, or however extensive, was well known to the President at the date of his message to Congress at the opening of the last session. And I must be allowed to remind you how the President treated this subject in that communication.

“However desirous the United States may be,” said he, “for the suppression of the slave-trade, they cannot consent to interpolations into the maritime code at the mere will and pleasure of other governments. We deny the right of any such interpolation to any one, or all the nations of the earth, without our consent. We claim to have a voice in all amendments or alterations of that code; and when we are given to understand, as in this instance, by a foreign government, that its treaties with other nations cannot be executed without the establishment and enforcement of new principles of maritime police, to be applied without

our consent, we must employ a language neither of equivocal import nor susceptible of misconstruction. American citizens prosecuting a lawful commerce in the African seas, under the flag of their country, are not responsible for the abuse or unlawful use of that flag by others; nor can they rightfully, on account of any such alleged abuses, be interrupted, molested, or detained while on the ocean; and if thus molested and detained while pursuing honest voyages in the usual way, and violating no law themselves, they are unquestionably entitled to indemnity."

This declaration of the President stands: not a syllable of it has been, or will be, retracted. The principles which it announces rest on their inherent justice and propriety, on their conformity to public law, and, so far as we are concerned, on the determination and ability of the country to maintain them. To these principles the government is pledged, and that pledge it will be at all times ready to redeem.

But what is your own language on this point? You say, "This claim (the British claim), thus asserted and supported, was promptly met and firmly repelled by the President in his message at the commencement of the last session of Congress; and in your letter to me approving the course I had adopted in relation to the question of the ratification by France of the quintuple treaty, you consider the principles of that message as the established policy of the government." And you add, "So far, our national dignity was uncompromitted." If this be so, what is there which has since occurred to compromit this dignity? You shall yourself be judge of this; because you say, in a subsequent part of your letter, that "the mutual rights of the parties are in this respect wholly untouched." If, then, the British pretension had been promptly met and firmly repelled by the President's message; if, so far, our national dignity had not been compromitted; and if, as you further say, our rights remain wholly untouched by any subsequent act or proceeding, what ground is there on which to found complaint against the treaty?

But your sentiments on this point do not concur with the opinions of your government. That government is of opinion that the sentiments of the message, which you so highly approve, are reaffirmed and corroborated by the treaty, and the correspondence accompanying it. The very object sought to

be obtained, in proposing the mode adopted for abolishing the slave-trade, was to take away all pretence whatever for interrupting lawful commerce by the visitation of American vessels. Allow me to refer you, on this point, to the following passage in the message of the President to the Senate, accompanying the treaty :—

“In my message at the commencement of the present session of Congress, I endeavored to state the principles which this government supports respecting the right of search and the immunity of flags. Desirous of maintaining those principles fully, at the same time that existing obligations should be fulfilled, I have thought it most consistent with the dignity and honor of the country that it should execute its own laws and perform its own obligations by its own means and its own power. The examination or visitation of the merchant-vessels of one nation by the cruisers of another, for any purposes except those known and acknowledged by the law of nations, under whatever restraints or regulations it may take place, may lead to dangerous results. It is far better by other means to supersede any supposed necessity, or any motive, for such examination or visit. Interference with a merchant-vessel by an armed cruiser is always a delicate proceeding, apt to touch the point of national honor, as well as to affect the interests of individuals. It has been thought, therefore, expedient, not only in accordance with the stipulations of the treaty of Ghent, but at the same time as removing all pretext on the part of others for violating the immunities of the American flag upon the seas, as they exist and are defined by the law of nations, to enter into the articles now submitted to the Senate.

“The treaty which I now submit to you proposes no alteration, mitigation, or modification of the rules of the law of nations. It provides simply, that each of the two governments shall maintain on the coast of Africa a sufficient squadron to enforce, separately and respectively, the laws, rights, and obligations of the two countries for the suppression of the slave-trade.”

In the actual posture of things, the President thought that the government of the United States, standing on its own rights and its own solemn declarations, would only weaken its position by making such a demand as appears to you to have been expedient. We maintain the public law of the world as we receive it and understand it to be established. We defend our own rights and our own honor, meeting all aggression at the boundary. Here we may well stop.

You are pleased to observe, that “under the circumstances

of the assertion of the British claim, in the correspondence of the British secretaries, and of its denial by the President of the United States, the eyes of Europe were upon these two great naval powers; one of which had advanced a pretension, and avowed her determination to enforce it, which might at any moment bring them into collision."

It is certainly true that the attention of Europe has been very much awakened, of late years, to the general subject, and quite alive, also, to whatever might take place in regard to it between the United States and Great Britain. And it is highly satisfactory to find, that, so far as we can learn, the opinion is universal that the government of the United States has fully sustained its rights and its dignity by the treaty which has been concluded. Europe, we believe, is happy to see that a collision, which might have disturbed the peace of the whole civilized world, has been avoided in a manner which reconciles the performance of a high national duty, and the fulfilment of positive stipulations, with the perfect immunity of flags and the equality of nations upon the ocean. I must be permitted to add, that, from every agent of the government abroad who has been heard from on the subject, with the single exception of your own letter, (an exception most deeply regretted,) as well as from every part of Europe where maritime rights have advocates and defenders, we have received nothing but congratulation. And at this moment, if the general sources of information may be trusted, our example has recommended itself already to the regard of states the most jealous of British ascendancy at sea; and the treaty against which you remonstrate may soon come to be esteemed by them as a fit model for imitation.

Toward the close of your despatch, you are pleased to say: "By the recent treaty we are to keep a squadron upon the coast of Africa. We have kept one there for years; during the whole term, indeed, of these efforts to put a stop to this most iniquitous commerce. The effect of the treaty is, therefore, to render it obligatory upon us, by a convention, to do what we have long done voluntarily; to place our municipal laws, in some measure, beyond the reach of Congress." Should the effect of the treaty be to place our municipal laws, in some measure, beyond the reach of Congress, it is sufficient to say that all treaties containing obligations necessarily do this. All

treaties of commerce do it; and, indeed, there is hardly a treaty existing, to which the United States are party, which does not, to some extent, or in some way, restrain the legislative power. Treaties could not be made without producing this effect.

But your remark would seem to imply, that, in your judgment, there is something derogatory to the character and dignity of the country in thus stipulating with a foreign power for a concurrent effort to execute the laws of each. It would be a sufficient refutation of this objection to say, that, if in this arrangement there be any thing derogatory to the character and dignity of one party, it must be equally derogatory, since the stipulation is perfectly mutual, to the character and dignity of both. But it is derogatory to the character and dignity of neither. The objection seems to proceed still upon the implied ground that the abolition of the slave-trade is more a duty of Great Britain, or a more leading object with her, than it is or should be with us; as if, in this great effort of civilized nations to do away the most cruel traffic that ever scourged or disgraced the world, we had not as high and honorable, as just and merciful, a part to act, as any other nation upon the face of the earth. Let it be for ever remembered, that in this great work of humanity and justice the United States took the lead themselves. This government declared the slave-trade unlawful; and in this declaration it has been followed by the great powers of Europe. This government declared the slave-trade to be piracy; and in this, too, its example has been followed by other states. This government, this young government, springing up in this new world within half a century, founded on the broadest principles of civil liberty, and sustained by the moral sense and intelligence of the people, has gone in advance of all other nations in summoning the civilized world to a common effort to put down and destroy a nefarious traffic reproachful to human nature. It has not deemed, and it does not deem, that it suffers any derogation from its character or its dignity, if, in seeking to fulfil this sacred duty, it act, as far as necessary, on fair and equal terms of concert with other powers having in view the same praiseworthy object. Such were its sentiments when it entered into the solemn stipulations of the treaty of Ghent; such were its sentiments when it requested England to concur with us in declaring the slave-trade to be piracy; and such are

the sentiments which it has manifested on all other proper occasions.

In conclusion, I have to repeat the expression of the President's deep regret at the general tone and character of your letter, and to assure you of the great happiness it would have afforded him if, concurring with the judgment of the President and Senate, concurring with what appears to be the general sense of the country, concurring in all the manifestations of enlightened public opinion in Europe, you had seen nothing in the treaty of the 9th of August to which you could not give your cordial approbation.

I have, &c.

DANIEL WEBSTER.

LEWIS CASS, Esq., &c., &c., &c.

*Mr. Webster to General Cass.*

Department of State, Washington, December 20, 1842.

SIR, — Your letter of the 11th instant has been submitted to the President. He directs me to say, in reply, that he continues to regard your correspondence, of which this letter is part, as being quite irregular from the beginning. You had asked leave to retire from your mission; the leave was granted by the President, with kind and friendly remarks upon the manner in which you had discharged its duties. Having asked for this honorable recall, which was promptly given, you afterward addressed to this department your letter of the 3d of October, which, however it may appear to you, the President cannot but consider as a remonstrance, a protest, against the treaty of the 9th of August; in other words, an attack upon his administration for the negotiation and conclusion of that treaty. He certainly was not prepared for this. It came upon him with no small surprise, and he still feels that you must have been, at the moment, under the influence of temporary impressions, which he cannot but hope have ere now worn away.

A few remarks upon some of the points of your last letter must now close the correspondence.

In the first place, you object to my having called your letter of October 3d a "protest or remonstrance" against a transaction of the government, and observe that you must have been unhappy in the mode of expressing yourself, if you were liable to this charge.

What other construction your letter will bear, I cannot perceive. The transaction was *finished*. No letter or remarks of yourself, or any one else, could undo it, if desirable. Your opinions were unsolicited. If given as a citizen, then it was altogether unusual to address them to this department in an official despatch; if as a public functionary, the whole subject-matter was quite aside from the duties of your particular station. In your letter you did not propose any thing *to be done*, but objected to what had been done. You did not suggest any method of remedying what you were pleased to consider a defect, but stated what you thought to be reasons for fearing its consequences. You declared that there had been, in your opinion, an omission to assert American rights; to which omission you gave the department to understand that you would never have consented.

In all this there is nothing but protest and remonstrance; and, though your letter be not formally entitled such, I cannot see that it can be construed, in effect, as any thing else; and I must continue to think, therefore, that the terms used are entirely applicable and proper.

In the next place, you say: "You give me to understand that the communications which have passed between us on this subject are to be published, and submitted to the great tribunal of public opinion."

It would have been better if you had quoted my remark with entire correctness. What I said was, not that the communications which have passed between us *are to be* published, or *must* be published, but that "it may become necessary hereafter to publish your letter, in connection with other correspondence of the mission; and, although it is not to be presumed that you looked to such publication, because such a presumption would impute to you a claim to put forth your private opinions upon the conduct of the President and Senate, in a transaction finished and concluded, through the imposing form of a public despatch; yet, if published, it cannot be foreseen how far England might hereafter rely on your authority for a construction favorable to her own pretensions, and inconsistent with the interest and honor of the United States."

In another part of your letter you observe: "The publication of my letter, which is to produce this result, is to be the act of

the government, and not my act. But if the President should think that the slightest injury to the public interest would ensue from the disclosure of my views, the letter may be buried in the archives of the department, and thus forgotten and rendered harmless."

To this I have to remark, in the first place, that instances have occurred in other times, not unknown to you, in which highly important letters from ministers of the United States, in Europe, to their own government, have found their way into the newspapers of Europe, when that government itself held it to be inconsistent with the interest of the United States to make such letters public.

But it is hardly worth while to pursue a topic like this.

You are pleased to ask: "Is it the duty of a diplomatic agent to receive all the communications of his government, and to carry into effect their instructions *sub silentio*, whatever may be his own sentiments in relation to them; or is he not bound, as a faithful representative, to communicate freely, but respectfully, his own views, that these may be considered, and receive their due weight, in that particular case, or in other circumstances involving similar considerations? It seems to me that the bare enunciation of the principle is all that is necessary for my justification. I am speaking now of the propriety of my action, not of the manner in which it was performed. I may have executed the task well or ill. I may have introduced topics unadvisedly, and urged them indiscreetly. All this I leave without remark. I am only endeavoring here to free myself from the serious charge which you bring against me. If I have misapprehended the duties of an American diplomatic agent upon this subject, I am well satisfied to have withdrawn, by a timely resignation, from a position in which my own self-respect would not permit me to remain. And I may express the conviction, that there is no government, certainly none this side of Constantinople, which would not encourage rather than rebuke the free expression of the views of their representatives in foreign countries."

I answer, certainly not. In the letter to which you were replying it was fully stated, that, "in common with every other citizen of the republic, you have an unquestionable right to form opinions upon public transactions and the conduct of pub-



lic men. But it will hardly be thought to be among either the duties or the privileges of a minister abroad to make formal remonstrances and protests against proceedings of the various branches of the government at home, upon subjects in relation to which he himself has not been charged with any duty, or partaken any responsibility."

You have not been requested to bestow your approbation upon the treaty, however gratifying it would have been to the President to see that, in that respect, you united with other distinguished public agents abroad. Like all citizens of the republic, you are quite at liberty to exercise your own judgment upon that as upon other transactions. But neither your observations nor this concession cover the case. They do not show, that, as a public minister abroad, it is a part of your official functions, in a public despatch, to remonstrate against the conduct of the government at home in relation to a transaction in which you bore no part, and for which you were in no way answerable. The President and Senate must be permitted to judge for themselves in a matter solely within their control. Nor do I know that, in complaining of your protest against their proceedings in a case of this kind, any thing has been done to warrant, on your part, an invidious and unjust reference to Constantinople. If you could show, by the general practice of diplomatic functionaries in the civilized part of the world, and more especially, if you could show by any precedent drawn from the conduct of the many distinguished men who have represented the government of the United States abroad, that your letter of the 3d of October was, in its general object, tone, and character, within the usual limits of diplomatic correspondence, you may be quite assured that the President would not have recourse to the code of Turkey in order to find precedents the other way.

You complain that, in the letter from this department of the 14th of November, a statement contained in yours of the 3d of October is called a tissue of mistakes, and you attempt to show the impropriety of this appellation. Let the point be distinctly stated, and what you say in reply be then considered.

In your letter of October 3d you remark, that "England then urged the United States to enter into a conventional arrangement, by which we might be pledged to concur with her in

measures for the suppression of the slave-trade. Until then, we had executed our own laws in our own way ; but, yielding to this application, and departing from our former principle of avoiding European combinations upon subjects not American, we stipulated in a solemn treaty that we would carry into effect our own laws, and fixed the minimum force we would employ for that purpose."

The letter of this department of the 14th of November, having quoted this passage, proceeds to observe, that "the President cannot conceive how you should have been led to adventure upon such a statement as this. It is but a tissue of mistakes. England did not urge the United States to enter into this conventional arrangement. The United States yielded to no application from England. The proposition for abolishing the slave-trade, as it stands in the treaty, was an American proposition ; it originated with the executive government of the United States, which cheerfully assumes all its responsibility. It stands upon it as its own mode of fulfilling its duties and accomplishing its objects. Nor have the United States departed in the slightest degree from their former principles of avoiding European combinations upon subjects not American ; because the abolition of the African slave-trade is an American subject as emphatically as it is a European subject, and, indeed, more so, inasmuch as the government of the United States took the first great step in declaring that trade unlawful, and in attempting its extinction. The abolition of this traffic is an object of the highest interest to the American people and the American government ; and you seem strangely to have overlooked altogether the important fact, that nearly thirty years ago, by the treaty of Ghent, the United States bound themselves, by solemn compact with England, to continue their efforts to promote its entire abolition ; both parties pledging themselves by that treaty to use their best endeavors to accomplish so desirable an object."

Now, in answer to this, you observe in your last letter : " That the particular mode in which the governments should act in concert, as finally arranged in the treaty, was suggested by yourself, I never doubted. And if this is the construction I am to give to your denial of my correctness, there is no difficulty upon the subject. The question between us is untouched. All

I said was, that England continued to prosecute the matter; that she presented it for negotiation, and that we thereupon consented to its introduction. And if Lord Ashburton did not come out with instructions from his government to endeavor to effect some arrangement upon this subject, the world has strangely misunderstood one of the great objects of his mission, and I have misunderstood that paragraph in your first note, where you say that Lord Ashburton comes with full powers to negotiate and settle all matters in discussion between England and the United States. But the very fact of his coming here, and of his acceding to any stipulations respecting the slave-trade, is conclusive proof that his government were desirous to obtain the coöperation of the United States. I had supposed that our government would scarcely take the initiative in this matter, and urge it upon that of Great Britain, either in Washington or in London. If it did so, I can only express my regret, and confess that I have been led inadvertently into an error."

It would appear from all this, that that which, in your first letter, appeared as a direct statement of facts, of which you would naturally be presumed to have had knowledge, sinks at last into inferences and conjectures. But, in attempting to escape from some of the mistakes of this tissue, you have fallen into others. "All I said was," you observe, "that England continued to prosecute the matter; that she presented it for negotiation, and that we thereupon consented to its introduction." Now the English minister no more presented this subject for negotiation than the government of the United States presented it. Nor can it be said that the United States consented to its introduction in any other sense than it may be said that the British minister consented to it. Will you be good enough to review the series of your own assertions on this subject, and see whether they can possibly be regarded merely as a statement of your own inferences? Your only authentic fact is a general one, that the British minister came clothed with full power to negotiate and settle all matters in discussion. This, you say, is conclusive proof that his government was desirous to obtain the coöperation of the United States respecting the slave-trade; and then you infer that England continued to prosecute this matter, and presented it for negotiation, and that the

United States consented to its introduction; and give to this inference the shape of a direct statement of a fact.

You might have made the same remarks, and with the same propriety, in relation to the subject of the "Creole," that of impressment, the extradition of fugitive criminals, or any thing else embraced in the treaty or in the correspondence, and then have converted these inferences of your own into so many facts. And it is upon conjectures like these, it is upon such inferences of your own, that you make the direct and formal statement in your letter of the 3d of October, that "England then urged the United States to enter into a conventional arrangement, by which we might be pledged to concur with her in measures for the suppression of the slave-trade. Until then, we had executed our own laws in our own way; but, yielding to this application, and departing from our former principle of avoiding European combinations upon subjects not American, we stipulated in a solemn treaty that we would carry into effect our own laws, and fixed the minimum force we would employ for that purpose."

The President was well warranted, therefore, in requesting your serious reconsideration and review of that statement.

Suppose your letter to go before the public unanswered and uncontradicted; suppose it to mingle itself with the general political history of the country, as an official letter among the archives of the Department of State, would not the general mass of readers understand you as reciting facts, rather than as drawing your own conclusions? as stating history, rather than as presenting an argument? It is of an incorrect narrative that the President complains. It is that, in your hotel at Paris, you should undertake to write a history of a very delicate part of a negotiation carried on at Washington, with which you had nothing to do, and of the history of which you had no authentic information; and which history, as you narrate it, reflects not a little on the independence, wisdom, and public spirit of the administration.

As of the history of this part of the negotiation you were not well informed, the President cannot but think it would have been more just in you to have refrained from any attempt to give an account of it.

You observe, further: "I never mentioned in my despatch to

you, nor in any manner whatever, that our government had conceded to that of England the right to search our ships. That idea, however, pervades your letter, and is very apparent in that part of it which brings to my observation the possible effect of my views upon the English government. But in this you do me, though I am sure unintentionally, great injustice. I repeatedly state that the recent treaty leaves the rights of the parties as it found them. My difficulty is not that we have made a positive concession, but that we have acted unadvisedly in not making the abandonment of this pretension a previous condition to any conventional arrangement upon the general subject."

On this part of your letter I must be allowed to make two remarks.

The first is, inasmuch as the treaty gives no color or pretext whatever to any right of searching our ships, a declaration against such a right would have been no more suitable to this treaty than a declaration against the right of sacking our towns in time of peace, or any other outrage.

The rights of merchant-vessels of the United States on the high seas, as understood by this government, have been clearly and fully asserted. As asserted, they will be maintained; nor would a declaration such as you propose have increased either its resolution or its ability in this respect. The government of the United States relies on its own power, and on the effective support of the people, to assert successfully all the rights of all its citizens, on the sea as well as on the land; and it asks respect for these rights not as a boon or favor from any nation. The President's message, most certainly, is a clear declaration of what the country understands to be its rights, and his determination to maintain them, not a mere promise to negotiate for these rights, or to endeavor to bring other powers into an acknowledgment of them, either express or implied. Whereas, if I understand the meaning of this part of your letter, you would have advised that something should have been offered to England which she might have regarded as a benefit, but coupled with such a declaration or condition as that, if she received the boon, it would have been a recognition by her of a claim which we make as matter of right. The President's view of the proper duty of the government has certainly been quite different. Being convinced that the doctrine asserted by this government is

the true doctrine of the law of nations, and feeling the competency of the government to uphold and enforce it for itself, he has not sought, but, on the contrary, has sedulously avoided, to change this ground, and to place the just rights of the country upon the assent, express or implied, of any power whatever.

The government thought no skilfully extorted promises necessary in any such cases. It asks no such pledges of any nation. If its character for ability and readiness to protect and defend its own rights and dignity is not sufficient to preserve them from violation, no interpolation of promise to respect them, ingeniously woven into treaties, would be likely to afford such protection. And, as our rights and liberties depend for existence upon our power to maintain them, general and vague protests are not likely to be more effectual than the Chinese method of defending their towns, by painting grotesque and hideous figures on the walls to fright away assailing foes.

My other remark on this portion of your letter is this:

Suppose a declaration to the effect that this treaty should not be considered as sacrificing any American rights had been appended, and the treaty, thus fortified, had been sent to Great Britain, as you propose; and suppose that that government, with equal ingenuity, had appended an equivalent written declaration that it should not be considered as sacrificing any British right, how much more defined would have been the rights of either party, or how much clearer the meaning and interpretation of the treaty, by these reservations on both sides? Or, in other words, what is the value of a protest on one side, balanced by an exactly equivalent protest on the other?

No nation is presumed to sacrifice its rights, or give up what justly belongs to it, unless it expressly stipulates that, for some good reason or adequate consideration, it does make such relinquishment; and an unnecessary asseveration that it does not intend to sacrifice just rights would seem only calculated to invite aggression. Such proclamations would seem better devised for concealing weakness and apprehension, than for manifesting conscious strength and self-reliance, or for inspiring respect in others.

Toward the end of your letter you are pleased to observe: "The rejection of a treaty, duly negotiated, is a serious question, to be avoided whenever it can be without too great a sacri-

fice. Though the national faith is not actually committed, still it is more or less engaged. And there were peculiar circumstances, growing out of long-standing difficulties, which rendered an amicable arrangement of the various matters in dispute with England a subject of great national interest. But the negotiation of a treaty is a far different subject. Topics are omitted or introduced at the discretion of the negotiators, and they are responsible, to use the language of an eminent and able Senator, for 'what it contains and what it omits.' This treaty, in my opinion, omits a most important and necessary stipulation; and therefore, as it seems to me, its negotiation, in this particular, was unfortunate for the country."

The President directs me to say, in reply to this, that in the treaty of Washington no topics were omitted, and no topics introduced, at the mere discretion of the negotiator; that the negotiation proceeded from step to step, and from day to day, under his own immediate supervision and direction; that he himself takes the responsibility for what the treaty contains and what it omits, and cheerfully leaves the merits of the whole to the judgment of the country.

I now conclude this letter, and close this correspondence, by repeating once more the expression of the President's regret that you should have commenced it by your letter of the 3d of October.

It is painful to him to have with you any cause of difference. He has a just appreciation of your character and your public services at home and abroad. He cannot but persuade himself that you must be aware yourself, by this time, that your letter of October was written under erroneous impressions, and that there is no foundation for the opinions respecting the treaty which it expresses; and that it would have been far better on all accounts if no such letter had been written.

I have, &c.

DANIEL WEBSTER.

LEWIS CASS, Esq., *Late Minister of the United States at Paris.*

# Relations with Spain

SCHOONER "AMISTAD."

*The Chevalier d'Argaiz to Mr. Webster.*

[TRANSLATION.]

Washington, April 5, 1841.

THE Chevalier d'Argaiz had the honor to receive, with the Secretary of State's note of the 3d instant, copies of two letters received at his department relative to the slave Antonio. They contain some inaccuracies, which will not, however, be indicated, as they are of no importance.

The late Secretary of State, on learning the decision of the District Court of Connecticut, informed the Chevalier d'Argaiz that the slave Antonio was at his disposal, and the Chevalier d'Argaiz, in consequence, determined to bring him to his own house, until there should be a proper opportunity to send him to Havana; and when about to carry this determination into effect, Mr. Forsyth informed him that the District Attorney of Connecticut had declared that it would be necessary for the slave Antonio to remain in that State until the cause should be brought by appeal before the Circuit Court, on account of the great value of his evidence. To this the Chevalier d'Argaiz assented, and since that time he has heard nothing of the said negro.

Circumstances have, however, been entirely altered, by the decision of the Supreme Court; and, according to the information received by the Chevalier d'Argaiz, it is very probable that the negro will not reach Havana, if he should take upon himself the charge of sending him there. For which reason, he



conceives that the government of the United States will be better able to insure his arrival at that island, where the consul of the Union may deliver him to his master.

The Chevalier d'Argaiz avails himself of this occasion to repeat to the Secretary of State the assurances of his high consideration.

HON. DANIEL WEBSTER, *Secretary of State.*

*The Chevalier d'Argaiz to Mr. Webster.*

[TRANSLATION.]

Washington, April 11, 1841.

SIR, — Her Majesty's vice-consul at Boston writes to me, under the date of the 7th instant, as follows: —

"I have just received from the marshal of Connecticut a letter, of which this is a literal translation. Since my last letter to you, respecting the case of the negro Antonio, my conjectures have been realized, though in a different manner. At that time I supposed and feared that the self-styled friends of the Africans would solicit a writ of *habeas corpus* for his liberation; but they adopted another method. The jailer allowed the boy to go about the house, and assist in the labors of the kitchen and in waiting at table. The said friends availed themselves of every opportunity to preach to him about liberty, and at length induced him to go away; they placed him on board the steamboat on Monday morning last, and he went to New York. I followed him to that city, where Lewis Tappan, the leader of the Abolitionists, informed me that Antonio was in town, but that he would not be delivered to me, and that arrangements had been made for sending him elsewhere. I could not meet him myself. I regret this occurrence very much, and fear that he is beyond our reach. If, however, I should succeed in finding him anywhere, you shall receive immediate notice."

By the letters from Mr. Baldwin, of the 21st of March last, and from Mr. Andrew Judson, of the 26th of the same, which you were pleased to send me with your note of April 3d, it appeared that the negro Antonio persisted in desiring to return to Havana; from which it may be inferred that, in order to make him change that determination, seduction or deception must have been employed, perhaps by persons whom his de-

larations might have affected (*comprometer*); and I do not understand why the marshal of Connecticut, whom Lewis Tappan informed that the said negro was in the city, did not take any measures to engage the authorities of that place, either with the view to recover him or to have him placed on board a vessel for Havana.

In virtue of what is here stated, I have considered it my duty to make this communication to you, Sir, having no doubt that you would take the necessary measures to have the slave Antonio restored to his owner.

I repeat to you, Sir, the assurances of my distinguished consideration.

P. A. D'ARGAIZ.

HON. DANIEL WEBSTER, *Secretary of State*.

*Mr. F. Webster to the Chevalier d'Argaiz.*

Department of State, Washington, May 3, 1841.

SIR, — In the absence of the Secretary of State, I have the honor of replying to your note of the 11th of April last, relating to the negro Antonio. I have laid it before the President, and am directed by him to say, that he regrets very much the occurrence of any event that seems at all likely to defer or delay the final and satisfactory settlement of the affair of the "Amistad."

Inquiry will be immediately directed to be made by the proper officers in order to discover the slave Antonio; and I shall have much pleasure in communicating to you the earliest information received at the department of the success of such investigation.

I avail myself of this occasion to offer you the assurances of my very high consideration.

FLETCHER WEBSTER, *Acting Secretary of State*.

THE CHEVALIER D'ARGAIZ.

*The Chevalier d'Argaiz to Mr. Webster.*

[TRANSLATION.]

Washington, May 29, 1841

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of her Catholic Majesty, has the honor, in compliance with what was agreed on with the Secretary of State in their last conference, to make known to him the conviction of the

undersigned, that the sixth article, as also the eighth, ninth, and tenth, of the treaty of 1795, have not been properly carried into execution (or effect) in the affair of the schooner "Amistad," as he conceives that he has proved in his correspondence. The subjects of her Catholic Majesty have not received the assistance expressed in those articles, nor have their properties been respected, as is stipulated in the said articles; and this must have been understood by the Attorney-General, Mr. Grundy, as appears by the opinion which he gave in November, 1839.

The government of the Union gave to this affair a course forced, illegal, and contrary to the intention of the contracting parties.

The undersigned protested against it in due time, making the government of the United States responsible for consequences. Aware, however, of the embarrassed situation of the actual administration, and that a change of circumstances has rendered it impossible now to effect the fulfilment of that treaty, the undersigned believes he ought to demand, as he now does, —

1. Indemnification for the vessel called the "Amistad."
2. Indemnification for her cargo, including the negroes found on board.
3. Indemnification for the losses and injuries suffered by (or inflicted on) the Spanish subjects, Don Pedro Montes and Don José Ruiz, during their unjust imprisonment.
4. The assurance that the course given to this affair shall never serve as a precedent in analogous cases which may occur.

The undersigned avails himself of this occasion to repeat to the Secretary of State the assurances of his high consideration.

P. A. D'ARGAÏZ.

HON. DANIEL WEBSTER.

*Mr. Webster to the Chevalier d'Argaiz.*

Department of State, Washington, September 1, 1841.

The undersigned has the honor to acknowledge the receipt of the note of M. d'Argaiz, Envoy Extraordinary and Minister Plenipotentiary of her Catholic Majesty, of the 29th of May, in which he makes known to the undersigned his conviction that the sixth, eighth, ninth, and tenth articles of the treaty of 1795, between the two countries, have not been properly carried into execution, in the affair of the "Amistad," as he conceives he

has proved in his correspondence, and demands, 1st, indemnification for the vessel called the "Amistad"; 2d, indemnification for the cargo, including the negroes found on board; 3d, indemnification for the losses and injuries suffered by (or inflicted on) the Spanish subjects, Don Pedro Montes and Don José Ruiz, during their unjust imprisonment; and, 4th, the assurance that the course given to this affair shall never serve as a precedent for any analogous cases that may occur.

This note has been laid before the President, and the undersigned has been by him instructed to reply as follows.

The President had supposed, that, after the decision of the Supreme Court of the United States upon this question, there would have been no occasion to renew a correspondence upon it between the two governments, and that M. d'Argaiz was aware that the President had no power to review or alter any of the judgments of that court, it being a tribunal wholly independent of the executive, and one whose decisions must be regarded as final and conclusive upon all questions brought before it. He had hoped, too, that its decree would have proved satisfactory to M. d'Argaiz and the government of Spain, and that the facts proved, and the arguments offered before it, together with the able opinions delivered by its members in rendering the decree, would have prevented all disagreement or dissatisfaction with the result to which they arrived. The court was guided in its deliberations as well by the treaty between the two countries as by the laws of nations and of the United States, and it is not for the executive to question that its decree was in exact conformity with the obligations imposed upon it by that treaty and those laws.

No branch of the government of the United States, whether legislative, executive, or judiciary, can have been influenced by any other motives than those of a sincere desire to perform all the duties, and fulfil all the requirements, exacted of either by the terms of the treaty between this government and Spain, with respect to her national character and sovereignty, and with a view of preserving and strengthening the friendly relations which have so long and so happily subsisted between them; and the undersigned hopes that M. d'Argaiz himself will eventually join in approbation of the course adopted, convinced, as he must be, of the friendly disposition of all branches of this government toward his own.

The articles to which M. d'Argaiz refers, as containing stipulations which have not been carried into effect in the case of the "Amistad," relate to the defence and protection of the persons or property of the subjects or citizens of either country which shall come within the jurisdiction of the other, by sea or land.

Of those cited, the ninth article, which provides for the safe-keeping and restoration of ships and merchandise rescued from the hands of pirates and robbers, which it declares shall be restored to their true proprietor, after due and sufficient proof shall be made concerning the property thereof, seems the most applicable to the case under consideration.

The undersigned, after a careful consideration of all the arguments offered by M. d'Argaiz, and an examination of the facts which have been made known, is unable to see in what particular this article, or any stipulation contained in it, has been violated or disregarded, or that the course given to this affair has been in any manner contrary to the spirit and intention of any part of the treaty.

Upon the arrival of the schooner "Amistad" near our coast, it was, with all its cargo, according to the provisions of the ninth article, taken into the custody of the officers of the nearest port.

In consequence of a claim preferred for salvage by those who had saved both vessel and cargo, and rescued the subjects of Spain from death, or perhaps imprisonment enduring for life among the savage inhabitants of Africa, the subject of the ownership of the vessel and cargo was brought before the courts. Before those courts also, the subjects of Spain submitted their answer to these claims, and their complaints; with how much magnanimity refusing compliance with a just demand for services rendered them at such a time and in such a situation, the undersigned will not undertake to say. Besides the common articles of merchandise and traffic, there was found on board a number of negroes, claimed as the lawful property of Spanish subjects, and said to form part of the cargo; and on these also, as part of the cargo, salvage was claimed by those who had saved them for their owners, if they had any, and their pretended owners from them.

The whole subject, then, of the ownership of the vessel, and

of all the cargo, came properly and legally before the courts, who proceeded, as was their duty under the treaty, on the presentment of such a case, to investigate it carefully, deliberately, and circumspectly.

Thus proceeding, the courts, upon the testimony before them, decided; awarding the vessel to its lawful owner, and the cargo to its respective lawful owners, and a certain amount of salvage to those who had been instrumental in saving both. It was found by the courts that the negroes were not the lawful property of any one, and no part of the cargo, and consequently subject to no claim for salvage; but that they were freemen, captured and sold, and held in bondage, contrary as well to the laws of Spain as of the United States; and the courts, in the just exercise of their power, decided as they were bound to do under existing laws and treaties, and upon the facts as they appeared. M. d'Argaiz demands indemnification for the vessel and cargo, including the negroes found on board. Were this government conscious of having inflicted injury upon any, whether a private individual or a powerful nation, indemnification would be readily granted; but the question of the existence of any such injury must be determined by the government itself. In this case, the undersigned is of opinion that no injury has been done to any one of the subjects of Spain, but, on the contrary, that the government has gone quite as far in granting them protection, and manifesting a favorable disposition toward them, as the circumstances under which they came within its notice could demand of it.

What injury has been inflicted on the subjects of Spain, owners of the vessel and cargo, by saving both from complete destruction, or from entire loss to them, and returning both to them when their legal claims were ascertained? What injury inflicted on those presenting claims to the negroes as slaves, by refusing to allow those claims, proved to be unfounded, and, by all provisions of the code of either country, illegal and criminal? M. d'Argaiz will recollect, besides, that in his note of the 26th of November, 1839, he demands these negroes, not as property, but as criminals, or, in his own language, "not as slaves, but as assassins." Had they been at any time slaves, they would have become, by their killing and escape from lawful bondage, assassins and pirates, whose delivery to

the government of Spain is not provided for in any stipulation of the treaty of 1795, and which would have been a matter of comity only, not to be demanded as a right. The one point involves the other, and a refusal to deliver them, certainly, is no violation or neglect of any obligation. But the undersigned does not propose to enter into any argument upon a subject which has already been discussed at length, both before the courts and between the two governments. M. d'Argaiz demands, also, indemnification for injuries suffered by or inflicted on the subjects of Spain, in the persons of Messrs. Ruiz and Montes. For any such losses or injuries inflicted on these persons by any one within the jurisdiction of the United States, this government offers reparation and indemnification through its courts, which stand open to hear their complaints, to ascertain and repair their wrongs, and punish the wrongdoers.

The undersigned, therefore, is instructed to say, that this government does not perceive with what justice any such demands as M. d'Argaiz has presented can be made on it, and confidently expects that all will agree in justifying and approving the course which it has adopted in regard to the affair.

M. d'Argaiz demands, lastly, "the assurance that the course given to this affair shall never serve as a precedent in any analogous cases which may occur." While the undersigned hopes that no misfortune of the kind will ever again take place upon our coast or elsewhere, and that no circumstances may ever again give rise to such occurrences as those which mark the affair of the "Amistad" from the commencement of her voyage, he assures M. d'Argaiz that the government of the United States will endeavor to discharge itself of all obligations imposed upon it with strict justice, honorably to itself, and respectfully toward those nations with whom it maintains amicable relations.

The undersigned avails himself of this occasion to offer to M. d'Argaiz the assurance of his very high regard and distinguished consideration.

DANIEL WEBSTER.

THE CHEVALIER D'ARGAIZ, &c.

An answer to the foregoing letter was returned by the Spanish minister, on the 24th of September, 1841. It is necessarily omitted in this

place, for want of room. Its purport is sufficiently apparent from the following reply by Mr. Webster.

*Mr. Webster to the Chevalier d'Argaiz.*

Department of State, Washington, June 21, 1842.

The Secretary of State has to acknowledge the receipt of the note of the 24th of September, which M. d'Argaiz did him the honor to address to him.

Viewing that note as intended mainly for a protest against the proceedings of this government in the case of the "Amistad," the undersigned did not think a reply was desired, or that any advantage would ensue from further prolonging the discussion.

Understanding now, from conversation with M. d'Argaiz, that a reply is expected, the undersigned proceeds to offer some remarks on the subject of M. d'Argaiz's note.

The undersigned did certainly suppose that the communication to M. d'Argaiz of the decision of the Supreme Court would close the correspondence on that subject. The immediate predecessor of the undersigned, whose remarks, as quoted by M. d'Argaiz, the undersigned well remembers, meant, and could have meant, nothing more, by those remarks, than that the decision of the Supreme Court would be the decision of the government. Mr. Forsyth does not use the word executive in this connection. He says "government." "Whatever be, in the end, the disposal of the question, it will be in consequence of a decision emanating from no other source than the government of the United States."

The Supreme Court is a part of that government, as Mr. Forsyth remarks; and its decision, in matters lawfully within its jurisdiction, is the final decision of the government of the United States upon such matters.

M. d'Argaiz seems to think that a treaty stipulation cannot be subjected to the interpretation of the judicial authority, and proceeds to remark, that, "if the courts of the Union possess the right of interpreting, considering, and deciding upon treaties contracted between nation and nation, and the executive power cannot inquire whether their decrees are or are not conformable with justice, it would be as well to declare, that, in order to give to treaties the force of treaties, or, at least, to render them



obligatory, they should be concluded with the judicial power, or, in better words, that treaties should be made, for them to be afterward interpreted as the courts might think proper." But the undersigned supposes that nothing is more common, in countries where the judiciary is an independent branch of the government, than for questions arising under treaties to be submitted to its decision. Indeed, in all regular governments, questions of private right, arising under treaty stipulations, are in their nature judicial questions. With us, a treaty is part of the supreme law of the land; as such, it influences and controls the decisions of all tribunals; and many instances might be quoted of decisions made in the Supreme Court of the United States, arising under their several treaties with Spain herself, as well as under treaties between the United States and other nations. Similar instances of judicial decisions on points arising under treaties may be found in the history of France, England, and other nations; and, indeed, the undersigned would take the liberty to remind the Chevalier d'Argaiz, that this very treaty of 1795 has been made the subject of judicial decision by a Spanish tribunal.

The undersigned would call to the recollection of the Chevalier d'Argaiz the case of Mr. D. Hareng, in which the Spanish colonial courts decided according to their sense of the intention of the treaty of 1795, and the intendant confirmed their decree, which was, that nothing in that treaty exempted Mr. Hareng from the payment of certain demands. From this decision this government was inclined to dissent, but never questioned the right and duty of a Spanish court to consider the intent and effect of a treaty.

M. d'Argaiz states: "The enlightened Secretary of State will agree with the undersigned, that one of the things which principally constitute the independence of a country is the jurisdiction of its courts, or, in other words, that no nation, nor its courts, should assume the faculty of pronouncing judicially upon acts committed within the jurisdiction of another. On this principle, the undersigned cannot conceive how the Secretary of State could for a single moment have supposed that the undersigned would have agreed to, and have seen with satisfaction, the decision of a court of the United States, pronounced upon acts appertaining to Spanish subjects, committed on board

of a Spanish vessel, and in the waters of a Spanish territory, within the purview of a treaty and of the law of nations.

"The Secretary of State is also pleased to observe, 'that the schooner "Amistad," upon her arrival on this coast, was, with all her cargo, according to the provisions of the ninth article, taken into the custody of the officers of the nearest port, and that, in consequence of a claim for salvage, the subject of the ownership of the vessel and cargo was brought before the courts.' The undersigned will not stop to remark upon the magnanimity of a demand for salvage preferred by officers of a ship of war of the United States. But does the Secretary of State believe that this can justify the intervention of the courts of the United States in this case, contrary to the opinion given by the Attorney-General, Mr. Grundy, and after, moreover, the officers themselves had renounced their claim to salvage, as Lieutenant Gedney, the commander of the *Washington*, himself declared to the undersigned? The Secretary of State also says, 'that it was found by the courts that the negroes were not the lawful property of any one.' One violation of necessity brought on another, not less unjust; for the judges of the United States, in order to ascertain whether or not the Africans were the lawful property of Spanish subjects, thought proper to examine the papers found on board of the vessel, which had been given by the authorities of her Catholic Majesty in the island of Cuba. This was a recognition of the right of search, which, besides its not being authorized by any nation, has been combated by writers on public law, and most particularly, in the case in question, by the distinguished jurist, Mr. Grundy, Attorney-General of the Union, at the time when the schooner 'Amistad' arrived on the Anglo-American coasts. (See his opinion on the case.)"

The undersigned will make one more attempt to state the general occurrences of this transaction so plainly that he cannot be misunderstood, with a hope of convincing M. d'Argaiz that nothing has been done by the authorities of the United States, or any of them, not in strict accordance with the principles of public law and the practice of nations; nothing which can be complained of with justice as an encroachment upon Spanish territories, or as visiting and searching Spanish vessels. The succinct history of the case is the most complete justifica-

tion which can be made of all that has been done in regard to it in the United States.

Lieutenant Gedney, of the United States brig *Washington*, on the 27th of June, 1839, discovered the Spanish schooner "*Amistad*," then at anchor within half a mile of the shore of the United States. The vessel was then in possession of certain blacks, who had risen upon and killed the captain. Lieutenant Gedney took possession of and brought in the vessel to the United States, and for this service claimed salvage upon the common principles of maritime law. The possession of the vessel had become already lost to her owners; and to save her from entire destruction, and to restore her to those owners, was esteemed a meritorious service. The Chevalier d'Argaiz must certainly understand, that when merchant-vessels are met with at sea so shattered by storms and tempests, or other disasters, or so deprived of their crew, as to be unable to prosecute their voyages, in all such cases other vessels falling in with them and saving them are entitled to reasonable compensation; and, to ascertain the amount of this compensation, the vessel is to be brought in, subjected to judicial proceedings, and justice rendered the claimants and salvors, according to well-established rules and principles.

Spain herself, in the early ages of commerce, was among the first to establish the principles, and lead in the administration, of this part of the maritime law, and these principles now prevail over the whole commercial world; and the highest judicial authority in the United States, acting under the influence of the same rules which must have controlled the decisions of an English tribunal, a French tribunal, or a Spanish tribunal, has decided that the case was a case for salvage, and has decreed to the salvors a just compensation. The undersigned is, therefore, quite at a loss to conceive how this transaction can be deemed an encroachment upon the jurisdiction of Spain, or an unlawful visitation and search of Spanish vessels. At the institution of proceedings in the court, claims were interposed on behalf of Spanish subjects for the vessel and cargo, which were allowed, subject to salvage.

Claims were also interposed for the negroes found on board, who were claimed as slaves, and the property of Spanish subjects. On the other hand, the negroes denied that they were

slaves, and the property of Spanish subjects or any other persons. It was impossible for the courts to avoid the decision of the questions thus brought before them; and, in deciding them, it was bound to regard the law of nations, the laws of Spain, the treaty between Spain and the United States, the laws of the United States, and the evidence produced in the case.

Proceeding upon these grounds, after a very patient investigation, and the hearing of elaborate arguments, the court decided that the negroes found on board the "Amistad," with one exception, were not slaves, nor the property of any body, but were free persons, and therefore decreed that they should be set at liberty. All this appears to the undersigned to be in the common course of such affairs. The questions in which Spanish subjects were interested have been heard and tried before competent tribunals, and one of them has been decided against the Spanish subjects; but this can give no possible ground of complaint on the part of Spain, unless Spain can show that the tribunal has acted corruptly, or has decided wrong in a case in no degree doubtful. Nations are bound to maintain respectable tribunals, to which the subjects of states at peace may have recourse for the redress of injuries and the maintenance of their rights. If the character of these tribunals be respectable, impartial, and independent, their decisions are to be regarded as conclusive.

The United States have carried the principle of acquiescence, in such cases, as far as any nation upon earth, and in respect to the decisions of Spanish tribunals quite as frequently, perhaps, as in respect to the tribunals of any other nation.

In almost innumerable cases of reclamations sought by citizens of the United States against Spain for alleged captures, seizures, and other wrongs committed by Spanish subjects, the answer has been, that the question has been fairly tried before an impartial Spanish tribunal, having competent jurisdiction, and decided against the claimant; and in the sufficiency of this answer the government of the United States has acquiesced.

If the tribunal be competent, if it be free from unjust influence, if it be impartial and independent, and if it have heard the case fully and fairly, its judgment is to stand as decisive of the matter before it. This principle governs in regard to the decisions of courts of common law, courts of equity, and es-

pecially courts of admiralty, where proceedings so often affect the rights and interests of citizens of foreign states and governments.

M. d'Argaiz complains that the vessel and cargo were sold, and that loss thereby happened to the owners. But all this was inevitable, and no blame attaches on account of it to the tribunal. In cases of an allowance for salvage, if the owner be not present and ready to pay the amount, the property must necessarily be sold, that the proceeds be properly apportioned between owner and salvor. This is a daily occurrence in every court of admiralty in the world. Sufficient notice of the intended sale was given in legal form, in order that the claimants might be present, or might, if they pleased, prevent it, by paying the amount awarded for salvage, and receive their property.

The Chevalier d'Argaiz complains that Messrs. Montes and Ruiz suffered an unjust imprisonment in the United States. The undersigned cannot but think that such an allegation of injury, put forth in behalf of Messrs. Montes and Ruiz, is not a little extraordinary. These persons themselves had held in unjust and cruel confinement certain negroes who, it appeared on trial, were as free as themselves, and these negroes, finding themselves within the protection of equal laws, sought redress, by a regular appeal to those laws, for the injuries which they had suffered. The pursuit of this redress by the injured parties, it appears, subjected Messrs. Ruiz and Montes to a temporary imprisonment. In the judgment of enlightened men, they will probably be thought to have been very fortunate in escaping severer consequences.

M. d'Argaiz's note contains a paragraph of the following tenor: "The undersigned cannot in any way admit the supposition advanced by the Secretary of State, that, 'even had the negroes been at any time slaves, they would have become, by their killing and escape from lawful bondage, assassins and pirates, whose delivery to the government of Spain, not having been provided for in any stipulations of the treaty of 1795, would have been a matter of comity only, not to be demanded as a right.' The treaty of 1795, unquestionably, does not provide for the delivery of pirates or assassins, but only because the contracting parties could never have imagined that a case like the present could have occasioned doubts of any

kind, and because the point was so clear that they did not think it necessary to take it into consideration. Who can foresee the horrible consequences which may result, as well in the islands of Cuba and Porto Rico as in the Southern States of the Union, should the slaves come to learn, and there will be no want of persons to inform them, that, on murdering, killing, and flying from lawful captivity whensoever they may be in transportation from one point of the islands to another, and coming to the United States, the delivery of them, on account of their having murdered, killed, or fled, cannot be demanded as a right? The undersigned leaves to the characteristic penetration of the Secretary of State [the task of imagining] the severe, incalculable evils which may be occasioned by realizing this supposition."

The undersigned must beg leave to differ entirely from M. d'Argaiz in regard to the rule of law for delivering up criminals and fugitives from justice. Although such extradition is sometimes made, yet, in the absence of treaty stipulations, it is always matter of comity or courtesy. No government is understood to be bound by the positive law of nations to deliver up criminals, fugitives from justice, who have sought an asylum within its limits. The government of the United States has had occasion to hold intercourse on this question with England, France, Russia, Denmark, and Sweden; and it understands it to be the sentiment of all these governments, as well as the judgment of standard writers on public law, that, in the absence of provisions by treaty, the extradition of fugitive offenders is a matter resting in the option and discretion of every government.

The undersigned has thus once more gone over the circumstances of this case, and stated the view which the government of the United States has of it. He sincerely and confidently hopes that the Chevalier d'Argaiz will perceive that this government has violated none of its obligations to Spain, and done no injustice, in any manner whatever, to any Spanish subject.

The undersigned avails himself of this occasion to renew to the Chevalier d'Argaiz assurances of his high consideration.

DANIEL WEBSTER.

THE CHEVALIER D'ARGAIZ, &c.

## Sound Dues at Elsinore, and the German Zoll-Verein

*Mr. Webster to the President of the United States.*

Department of State, Washington, May 24, 1841.

SIR,—There are two subjects connected with the foreign commerce of the United States to which the Secretary of State considers it to be his duty to call the attention of the President at the earliest opportunity.

The first is, the collection of Sound dues, or the tax payable at Elsinore, laid by the Danish government upon the cargoes of vessels passing through the Sound, into and out from the Baltic Sea.

The right of Denmark to levy these dues is asserted on the ground of ancient usage, coming down from the period when that power had possession of both shores of the Belt and Sound. However questionable the right, or uncertain its origin, it has been recognized by European governments in several treaties with Denmark, some of them entered into at as early a period as the fourteenth century; and inasmuch as our treaty with that power contains a clause putting us on the same footing, in this respect, as other the most favored nations, it has been acquiesced in, or, rather, has not been denied, by us.

The treaty of 1645, between Denmark and Holland, to which a tariff of the principal articles then known in commerce, with a rule of measurement and a fixed rate of duty, was appended, together with the subsequent one between the same parties in 1701, amendatory and explanatory of the former, has been generally considered as the basis of all subsequent treaties, and among them of our own, concluded in 1826, and limited to continue ten years from its date, and further until the end of one

year after notice by either party of an intention to terminate it, and which is still in force.

Treaties have also been concluded with Denmark by Great Britain, France, Spain, Portugal, Russia, Prussia, and Brazil, by which, with one or two exceptions in their favor, they are placed on the same footing as the United States.

There has recently been a general movement, on the part of the Northern powers of Europe, with regard to the subject of these Sound dues, which seems to afford to this government a favorable opportunity, in conjunction with them, for exerting itself to obtain some such alteration or modification of existing regulations as shall conduce to the freedom and extension of our commerce, or, at least, toward relieving it from some of the burdens now imposed, which, owing to the nature of our trade, operate, in many instances, very unequally and unjustly on it in comparison with that of other nations.

The ancient tariff of 1645, by which the payment of these dues was regulated, has never been revised, and by means of the various changes which have taken place in commerce since that period, and of the alteration in price in many articles therein included, chiefly in consequence of the settlement of America, and the introduction of her products into general commerce, it has become quite inapplicable.

It is presumed to have been the intention of the framers of that tariff to fix a duty of about one per cent. *ad valorem* upon the articles therein enumerated; but the change in value of many of those commodities, and the absence of any corresponding change in the duty, has, in many instances, increased the *ad valorem* from one per cent. to three, four, and even seven; and this generally upon those articles which form the chief exports of the United States, of South America, and the West India Islands: such as the articles of cotton, rice, raw sugar, tobacco, rum, Campeachy wood, &c.

On all articles not enumerated in this ancient tariff it is stipulated, by the treaty of 1701, that the "privileged nations," or those who have treaties with Denmark, shall pay an *ad valorem* of one per cent.; but the value of these articles being fixed by some rules known only to the Danish government, or at least unknown to us, this duty appears uncertain and fluctuating, and its estimate is very much left to the arbitrary discretion of the custom-house officers at Elsinore.



It has been contended by some of the public writers in Denmark, that goods of privileged nations, carried in the vessels of unprivileged nations, should not be entitled to the limitation of one per cent. *ad valorem*, but should be taxed one and a quarter per cent., the amount levied on the goods of unprivileged nations; and also, that this limitation should be confined to the direct trade; so that vessels coming from or bound to the ports of a nation not in treaty with Denmark should pay on their cargoes the additional quarter per cent.

These questions, although the former is not of so much consequence to us, who are our own carriers, are still, in connection with each other, of sufficient importance to render a decision upon them, and a final understanding, extremely desirable.

These Sound dues are, moreover, in addition to the port charges of light money, pass money, &c., which are quite equal to the rates charged at other places, and the payment of which, together with the Sound dues, often causes to vessels considerable delay at Elsinore.

The port charges, which are usual among all nations to whose ports vessels resort, are unobjectionable, except that, in this case, they are mere consequences of the imposition of the Sound dues, following necessarily upon the compulsory delay at Elsinore of vessels bound up and down the Sound with cargoes, with no intention of making any importation into any port of Denmark, and having no other occasion for delay at Elsinore than that which arises from the necessity of paying the Sound dues, and, in so doing, involuntarily subjecting themselves to these other demands.

These port duties would appear to have some reason in them, because of the equivalent; while, in fact, they are made requisite, with the exception, perhaps, of the expense of lights, by the delay necessary for the payment of the Sound dues.

The amount of our commerce with Denmark, direct, is considerable, compared with that of our transactions with Russia, Sweden, and the ports of Prussia and the Germanic Association on the Baltic; but the sum annually paid to that government in Sound dues, and the consequent port charges, by our vessels alone, is estimated at something over one hundred thousand dollars.

The greater proportion of this amount is paid by the articles

of cotton, sugar, tobacco, and rice; the first and last of these paying a duty of about three per cent. *ad valorem*, reckoning their value at the places whence they come.

By a list published at Elsinore in 1840, it appears that between April and November of that year seventy-two American vessels, comparatively a small number, lowered their topsails before the Castle of Cronberg. These were all bound up the Sound to ports on the Baltic, with cargoes composed, in part, of the above-named products, upon which alone, according to the tariff, was paid a sum exceeding forty thousand dollars for these dues.

Having disposed of these cargoes, they returned laden with the usual productions of the countries on the Baltic, on which, in like manner, were paid duties on going out through the Sound, again acknowledging the tribute by an inconvenient and sometimes hazardous ceremony.

The whole amount thus paid within a period of eight months on inward and outward bound cargoes, by vessels of the United States, none of which were bound for, or intended to stop at, any port in Denmark, except compulsorily at Elsinore, for the purpose of complying with these exactions, must have exceeded the large sum above named.

I have, therefore, thought proper to bring this subject before you at this time, and to go into these general statements in relation to it, which might be carried more into detail, and substantiated by documents now in the department, to the end that, if you should deem it expedient, instructions may be given to the representative of the United States at Denmark, to enter into friendly negotiations with that government, with a view of securing to the commerce of the United States a full participation in any reduction of these duties, or the benefits resulting from any new arrangements respecting them, which may be granted to the commerce of other states.

The other subject which, in the opinion of the Secretary, demands the early consideration of the government, is the Germanic Association, or Customs Union, established in Germany, and now in successful operation under the leading auspices of the government of Prussia. This important association has for its objects the union of many of the German states into one

body, for the purpose of establishing uniform regulations of commerce ; uniform duties of importation, exportation, and transit ; a system of uniform weights and measures, and a uniform coinage, throughout all the members of the association ; objects resembling, as will be perceived, important purposes contemplated by the establishment of the general government of the United States.

In all the states of the association the greatest variety and diversity had previously existed. Each had its own circle of custom-houses and its peculiar system of duties, constituting them in these respects foreign countries to one another. The effect of these diversities upon trade and manufactures may easily be supposed to have been highly prejudicial to the general commerce of the country.

To Prussia, who had labored for years to bring about this commercial revolution in Germany, chiefly belongs the credit of its accomplishment. She has united the members of the confederation in a treaty which establishes one tariff for all, the duties to be collected on the frontiers of what now forms one great commercial league. The net revenues arising from the duties are divided among the several states in proportion to their respective amounts of population, every article, salt and playing-cards excepted, having once paid the duties on the frontier, being permitted to circulate freely among all the states of the union without any additional impost.

The treaty was concluded in 1834, and was to continue in force until the 1st of January, 1842 ; and if during that term, and at latest two years before its expiration, the contrary should not be declared, for twelve years more ; and afterward, from twelve years to twelve years. It has recently, under these provisions, been renewed for another term of twelve years. The effect of this confederation has probably been to give to Prussia and Germany a new weight in the political balance of Europe ; but it is principally interesting to the United States in its commercial tendencies, and in the hopes which it encourages of furnishing an enlarged consumption of some of the staple articles of our production, such as cotton, tobacco, and rice.

The German Commercial and Customs Association comprises an ample territory, abounding in wealth, industry, population, and resources of every description. The states included in it are, —

# The German Zoll-Verein

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The kingdom of Prussia, whose population is . . . . .	14,271,530
The kingdom of Bavaria, . . . . .	4,315,469
The kingdom of Würtemberg, . . . . .	1,649,839
The kingdom of Saxony, . . . . .	1,652,114
The Grand Duchy of Baden, . . . . .	1,277,403
The Electorate of Hesse, . . . . .	704,700
The Grand Duchy of Hesse (with Homburg), . . . . .	807,671
The Duchy of Nassau, . . . . .	386,221
The Thuringian Union, . . . . .	908,478
The free city of Frankfort on the Maine, . . . . .	54,000
Total, . . . . .	<u>26,027,425</u>

It is understood that Brunswick has exhibited an inclination to separate from the Northwestern Union, of which she is now a member, and to join the association; and the accession of the Grand Duchy of Luxemburg is likely soon to swell still higher the total population of the states thus united, which constitutes already the most industrious, enlightened, and prosperous people of Germany.

Three of the German states have not yet acceded to the association, but have formed a separate Commercial and Customs Union, viz. :—

The kingdom of Hanover, whose population is . . . . .	1,772,107
The Grand Duchy of Oldenburg, . . . . .	266,536
The Duchy of Brunswick, . . . . .	251,000
Total, . . . . .	<u>2,289,643</u>

And a few of the states of Germany have neither acceded to the association, nor formed any special union among themselves; these are, —

The Duchies of Holstein and Lauenburg (belonging to the king of Denmark), whose population is . . . . .	471,276
The Grand Duchy of Mecklenburg-Schwerin, . . . . .	482,925
The Grand Duchy of Mecklenburg-Strelitz, . . . . .	89,528
The Hanseatic cities of Lubeck, Hamburg, and Bremen, . . . . .	245,500
Total, . . . . .	<u>1,289,229</u>

In the accomplishment of her great political object, Prussia has been compelled to make considerable pecuniary sacrifices, her revenues from the customs being less than before the formation of the association; though this falling off has been grad-

ually lessening, owing to the increased population and prosperity of the kingdom. The attempts made to adjust and compensate this loss have not been successful; but it is believed that the difficulty will be removed by allowing Prussia to levy, for her own exclusive benefit, the transit duties on cotton and other commodities, without any material change in the general system.

The net revenues of the association have increased from about twelve million thalers, collected in 1834, the year of its first establishment, to upward of twenty million, the present amount, exclusive of the expense of collection, amounting to twelve and a half per cent.; a prodigious increase, and mainly owing to the rapidly increasing prosperity, and consequently augmented consumption, of the German states associated in the league.

With Hanover, the United States have recently concluded a treaty of commerce and navigation, through the agency of Mr. Wheaton, Minister of the United States at Berlin, which has been ratified. This treaty differs from our commercial treaties with Prussia, the Hanseatic towns, and Denmark, by confining the indirect trade to the productions of the kingdom of Hanover, and of any other country of the confederation, on the one side; and, on the other, to the productions of the United States, and of the North and South American continent and West India Islands. It gives us the right of carrying to Hanover in our vessels the productions of the United States, and of the North and South American continent and islands, in exchange for their right of bringing in Hanoverian vessels to the United States the productions of Hanover and the countries composing the confederation, and may be regarded as favorable to our navigation.

Several states of the league have manifested a disposition to form treaties with the United States upon a similar basis; but it is not intended, on this occasion, to express any opinion upon the policy of establishing the principle of entire reciprocity in commercial treaties with the minor states of Europe.

One of the advantages already acquired by the negotiations of our minister at Berlin is a considerable reduction of the duties on rice, which, under a resolution of the House of Representatives of the 11th of June, 1838, he was instructed to en-

deavor to procure. This important object has been gained, and the consequences, as foreseen, were immediately beneficial to all parties. A great increase in the importation of Carolina rice, which took place as soon as the reduction of duty on the article became known, was followed by a correspondent increase of revenue drawn from its increased consumption in Germany. The success of this experiment encourages the belief that a like course in respect to other important staples would be followed by similar results.

The tobacco duties, however, serving as they do the twofold purpose of raising revenue and of protecting the culture of the tobacco of native growth in Germany, still find formidable obstacles in the way of their removal or modification. The state of the negotiations on this subject, up to the session of 1839 and 1840, is sufficiently explained in the correspondence transmitted to the House of Representatives with the President's message of the 14th of April, 1840.

Several of the states of the Germanic Association have no natural outlet to the sea. Their commerce, therefore, is carried on through rivers, the mouths of which open to the ocean in the territories of other powers. This shows the importance of the union to all the states composing it; but as the union itself is not a government, commercial stipulations and conventions must be made with the states of the union in their political capacities. By a paper annexed, marked A,\* it will appear that, in March last, Great Britain entered into a convention of commerce and navigation with Prussia, Bavaria, Saxony, Würtemberg, Baden, the Electorate of Hesse, the Grand Duchy of Hesse, the states forming the customs and commercial union of Thuringia, Nassau, and Frankfort; and similar arrangements with these states might probably be accomplished by the government of the United States.

Such being the general nature of the association, and such our commercial intercourse with it, it becomes matter of interest to consider how far our relations with its several members might be beneficially extended; and if it be thought advisable to enter into commercial treaties with them, or any of them, it

\* This convention, and the declaration afterwards alluded to, are omitted, as not being necessary to the understanding of Mr. Webster's report to the President.

will remain to be determined whether powers for such a purpose should be conferred upon the Minister of the United States at Berlin, or some other diplomatic agency adopted; the general object being to seek the means of enlarging the consumption of the staples of the United States in Germany, and of securing all practicable benefit to their navigation.

There is another part of the subject of our connection with Germany, which, though of less consequence than those that have been pointed out, is, nevertheless, one which deeply concerns the numerous German emigrants who are constantly selling their property to proceed to the United States, as well as our naturalized citizens, natives of Germany, inheriting property in that country. Throughout Germany the *droit d'aubaine* and the *droit de détraction* exist in the shape of a tax, payable on the withdrawal from the country of personal property which has been inherited by will or succession, or which forms the proceeds of real property inherited in the same manner. In the United States, as all know, no such tax exists.

It is probable that an exemption from this tax might be obtained on the ground of reciprocity. Some of the states have intimated their willingness to enter into arrangements for that purpose. If there should be thought to be no other reason for a formal convention, this particular object might be effected by a simple official declaration, signed by the Secretary of State, under the seal of the department, certifying that the subjects and citizens of Germany enjoy this immunity in the United States; upon which there is reason to believe that an alteration in their own laws would be made by the states, or some of them, so as to make the right reciprocal. The form of a declaration, such as is stated above, has been adopted by the English government, as may be seen by a paper hereunto annexed, marked B.

All which is respectfully submitted.

DANIEL WEBSTER.

TO THE PRESIDENT OF THE UNITED STATES.

# Treaty with Portugal

## CONSTRUCTION OF THE TREATY BETWEEN THE UNITED STATES AND PORTUGAL RESPECTING THE DUTIES ON PORTUGUESE WINES.

ON the 18th of November, 1841, M. de Figaniere e Morao, Minister Resident of Portugal in the United States, addressed a note to Mr. Webster, complaining that, by the provisions of an act of Congress approved the 11th of September preceding, by which the specific duties formerly levied on certain wines imported into the United States were changed to *ad valorem* duties, a discrimination was introduced unfavorable to the interests of Portugal. To this note Mr. Webster made the following reply:—

*Mr. Webster to M. de Figaniere e Morao.*

Department of State, Washington, February 9, 1842.

The undersigned, Secretary of State of the United States, has the honor to acknowledge M. de Figaniere e Morao's note of the 18th of November, and has given to it the consideration due to its importance, and to the friendly relations happily subsisting between the two governments.

The undersigned regrets that the government of Portugal should suppose that it has reason to complain, in any manner, of a law of the United States as being prejudicial to Portugal, or at variance with the amity and good-will subsisting between the two countries, and especially as inconsistent with the treaty obligations of the United States.

The law complained of was enacted on the 11th day of September, 1841; and its main provision was, to lay a duty of twenty per cent. *ad valorem* on all such articles as were at that



time free, or on which the duty was less than that rate, with certain exceptions. The wines of Portugal not being within the exceptions, and being subject at that time only to a specific duty, may fall under an increased charge or duty by the operation of this law.

The third article of the treaty subsisting between the United States and Portugal is in these words:—

“No higher or other duties shall be imposed on the importation into the kingdom and possessions of Portugal of any article, the growth, produce, or manufacture of the United States of America, and no higher or other duties shall be imposed on the importation into the United States of America of any article, the growth, produce, or manufacture of the kingdom and possessions of Portugal, than such as are or shall be payable on the like article, being the growth, produce, or manufacture of any other foreign country.

“Nor shall any prohibition be imposed on the importation or exportation of any article, the growth, produce, or manufacture of the United States of America, or of the kingdom and possessions of Portugal, to or from the ports of the said kingdom and possessions of Portugal, or of the said States, which shall not equally extend to all other foreign nations.

“Nor shall any higher or other duties or charges be imposed, in either of the two countries, on the exportation of any articles to the United States of America or to the kingdom of Portugal, respectively, than such as are payable on the exportation of the like articles to any other foreign country.

“Provided, however, that nothing contained in this article shall be understood or intended to interfere with the stipulation entered into by the United States of America, for a special equivalent, in regard to French wines, in the convention made by the said States and France on the fourth day of July, in the year of our Lord one thousand eight hundred and thirty-one, which stipulation will expire and cease to have effect in the month of February, in the year of our Lord one thousand eight hundred and forty-two.”

M. de Figanieri e Morao thinks that the provision of this article is interfered with by the above-mentioned act of Congress. He illustrates his own view of the subject by putting a case in the following form:—

“A pipe of wine from the Mediterranean, or Spain, or any other country, reaches a port in the United States at a cost (let it be supposed) of 30 cents the gallon, and a like pipe of wine from Portugal costing 38 cents per gallon. If the duty be specific, say 15 cents, they will both be subject to the same, and neither pay a higher or other duty than the other; for fifteen cents per gallon, and no more, would be levied on both pipes. Not so, however, according to the act of the 11th of September last, which imposes twenty per cent. *ad valorem*. The Spanish or other wine will pay only six cents per gallon, while from the like wine of Portugal will be exacted  $7\frac{40}{100}$  cents per gallon, which, *de facto*, operates as a discriminating duty against the Portuguese wine, contrary to the stipulations of the treaty between the two countries.”

Before proceeding to consider the argument and illustration thus advanced, the undersigned avails himself of the opportunity of stating to M. de Figanieri e Morao, that the language in the third article of the treaty between the United States and his government is of the same import with that used in most other treaties of the United States with foreign powers, and identical with that employed in some of them; and that no complaint has ever been made to this government, by the governments with whom such treaties have existed, of any injury, injustice, or want of strict compliance with treaty stipulations on any such ground as has been now taken by the Portuguese government. It will be at once obvious, therefore, to M. de Figanieri e Morao, that the government of the United States must take such a view of the question as it can maintain, not only in regard to Portugal, but many other powers also.

The interdict of the treaty is, —

“No higher or other duties shall be imposed on the importation into the United States of America of any article, the growth, produce, or manufacture of the kingdom and possessions of Portugal, than such as are or shall be payable on the like article, being the growth, produce, or manufacture of any other foreign country.”

The article on which the duty complained of is laid is wine; and the duty laid on Portuguese wine is exactly the same, in terms, as that laid on the like article (except as excepted in the law) coming from other countries. In other words, all wines

fall under the same duty of twenty per cent. *ad valorem*. In terms, therefore, the law is clearly within the treaty.

But M. de Figaniere e Morao thinks it not in conformity with the spirit and intent of the treaty, because, under its operation, a gallon of wine in Portugal may cost more than a gallon of wine in Spain, and therefore twenty per cent. on the cost of the gallon of Portuguese wine will be more than twenty per cent. on that of the Spanish wine; and consequently a gallon of Portuguese wine will pay a higher duty than a gallon of Spanish wine. That this may be the result of the operation of the law, cannot be denied; and this makes it necessary to inquire, What is the true interpretation of this third article of the treaty?

There may sometimes be difficulty, without doubt, in deciding on the just extent of such a provision, and in applying it, in the legislation of states bound to regard it; because, in general, articles identically the same, or in the language of the treaty alike, are seldom imported from different countries. Yet the provision itself is to be observed, and is to receive a reasonable and just construction. This is the leading rule of interpretation in regard to all treaties and other important compacts. Now it is evident, that, if M. de Figaniere e Morao's idea be correct, the government of the United States could impose no *ad valorem* duty whatever, because, as articles bearing the same general name, and imported from different countries, would of course be of different degrees of value and cost, the country producing those of highest value would always have cause of complaint, if subjected to an *ad valorem* duty. The result would be, that the government of the United States could not exercise its powers at all, in one of the most ordinary modes of taxation. As this consequence would be unreasonable, and evidently not within the contemplation of the parties, the reasoning which would conduct us to it must be rejected.

We are to consider, then, what is the just meaning of the terms "other or higher duties," and to inquire by what standard it is to be known and ascertained whether duties "other and higher" are laid in a given case. Now, to accomplish this, resort must be had to some measure of comparison, simple or mixed; some rule by which the question is to be decided.

What is that rule? What is the standard of comparison? Is some one single consideration to fix that standard, or may reference be had to various considerations? M. de Figanieri e Morao's idea is, that the only element of calculation, the only datum to be taken into view, is the quantity of the article; that is to say, he is of opinion, that, if one gallon pays more duty than another gallon, the duty is, for that reason alone, higher in the sense of the treaty. But the undersigned thinks, with all respect, that this may well be questioned; he thinks cost and value may be regarded as forming parts of the basis of calculation and comparison, as well as quantity. It is as reasonable, as it seems to him, to understand the treaty as saying that merchandise from Portugal shall pay no higher duties than similar merchandise from other countries, according to its value, as it is to understand it as saying that it shall pay no higher duties in proportion to its quantity. Cost and value are as reasonable a basis as mere measure, weight, or quantity, in deciding on the comparison of duties. Indeed, it appears to the undersigned that *ad valorem* duties are likely to be the most unexceptionable of all forms of imposts, so far as stipulations in treaties, like that now under consideration, are concerned. When duties are made specific, they are laid on different classes of the same general article at different rates, according to their respective degrees of cost or value. Cheap wines are not taxed so high as dearer wines; nor can it be considered as any purpose of the treaty to abolish such distinctions; so that cost and value ordinarily constitute either the whole or part of the ground upon which rates of duties are fixed. In the case stated by M. de Figanieri e Morao, the Portuguese wine is assumed as the more costly article. But we may well suppose an opposite case, and a case of specific duties of exactly the same nominal amount, and yet a case in which, as it appears to the undersigned, Portugal might complain with far greater appearance of reason than she now complains of the law of September. There are wines of Portugal, of large consumption, which cost much less than certain wines of France. Let us suppose that a wine of Lisbon cost fifty cents a gallon, and a wine of Bordeaux one dollar, and that each was taxed equally one dollar a gallon in the ports of the United States. Here would be an apparent equality, just such as M. de Figanieri e Morao now thinks ought to exist.

But would there be real equality? Might not the Portuguese producer say that he did not enjoy substantially the same advantage as his French competitor, inasmuch as his capital and labor, producing an article in greater quantity, but of lower price, were really subjected to a burden twice as great as that which fell on the labor and capital of the French producer? Might he not say, Suffer my product, according to its cost and value, to be received into the country upon the same terms, and not other or higher, as the products of other countries? The stipulation contained in the third article of the treaty between the United States and Portugal, and in other treaties to which the United States are parties, is just and liberal, and ought to be observed to the fullest practicable extent; but perhaps it may be found that it is necessarily circumscribed within certain limits, and subjected to qualifications. And this results from the fact that, in a commercial sense, and according to the common understanding of men, the generic word "article" is subdivisible, and its subdivisions are as well known, and are regarded in as independent and substantive a sense, as the generic term itself.

Wine is an article of commerce; but wine of Oporto, wine of Bordeaux, wine of Madeira, wine of Sicily, are separate articles; so regarded in transactions of commerce, so regarded in the duty laws of various governments, and especially in those of the United States.

It would, therefore, not be considered as any infraction of the treaty with Portugal, if Oporto wines were subjected to one duty and Sicily wines to another, since they are, in commercial understanding, different articles. And it may be added, that difference in cost or value may, in many cases, very materially contribute to settle the question of identity or difference between two articles; that is to say, in deciding whether two articles are the same, or alike, as the phrase of the treaty is, reference to the cost of each may be very pertinent and important. For example, the teas of China have heretofore been subject to different rates of duties in the United States as separate articles, under separate and specific denominations, as Bohea, Congo, Hyson, &c. Now in a disputed case, whether a particular article of that general kind belonged to one or the other of these classes would be an inquiry, in the prosecution of which one

important element of proof and ground of decision would naturally be the cost of the article, the more especially if the classes bore a considerable resemblance to each other, as is the case with some of them. So, if articles bearing the same general name come from different countries, whether they ought to be regarded as the same article is a question for the solution of which one may look not only to the name, but to their cost and value. And this consideration appears to the undersigned to show, he presumes to say, almost conclusively, that if the duty in a given case be *ad valorem*, it is, of all forms of laying duties, that which is most strictly in accordance with the provisions of treaties such as that between the United States and Portugal.

The article of the treaty under consideration was designed as a stipulation that no unfriendly legislation should be resorted to by one party against the other, nor any preference given to the products of other countries, with intent to injure or prejudice either party to the treaty. The treaty enjoins the spirit and practice of fair and equal legislation; but neither party supposed itself precluded by its stipulations from the ordinary modes of exercising its own power of making laws for raising revenue in its accustomed modes; and if it happen, in any case, that, from the operation of laws thus laid with fair intent and for necessary purposes, inconveniences result to either party, that result must be considered as not intended, but as arising from the nature of the case itself, and therefore as unavoidable.

These are the general views which have presented themselves to the undersigned in answer to M. de Figanieri e Morao's note, and he trusts that the government of Portugal will consider them as satisfactory. Portugal is one of the countries with which the United States, in taking their place in the circle of nations, had early friendly commercial and diplomatic intercourse. Happily, nothing has occurred permanently to disturb that intercourse. The two countries have no rivalries, no opposition of interests, no grounds of mutual distrust; and the undersigned avails himself of this opportunity to express his earnest hope that the harmony now insured by the stipulations of a fair and equal treaty may long continue, and to signify, at the same time, the high consideration with which he has the honor to regard M. de Figanieri e Morao.

DANIEL WEBSTER.

# Relations with Mexico

## AMERICAN CITIZENS CAPTURED AT SANTA FÉ.

*Mr. Webster to Mr. Ellis.*

Department of State, Washington, January 3, 1842.

SIR, — The friends of Mr. Franklin Coombs, son of General Leslie Coombs, of Kentucky, have applied for the interposition of this government in behalf of that young gentleman, who accompanied the late Texan expedition to Santa Fé, in Mexico, and is supposed to have been captured, and, if alive, to be held in bondage in that country, with the other survivors of the expedition. It has been represented to this department that young Coombs has never been a citizen of Texas; that he did not repair to that country with any intention of relinquishing his allegiance to this government, or of remaining in Texas; but that he went thither in the autumn of 1840, upon private business of his father, and for the benefit which he was assured his feeble health would derive from the milder winter climate of that region. He was, however, detained there by both causes, until about the time when the expedition referred to set out. This he determined to accompany, merely for the object of confirming his health, and gratifying a curiosity, both liberal and natural, in regard to the unknown lands through which the course of the expedition lay.

As there is no reason to doubt the correctness of this information, you will, accordingly, forthwith make the necessary representations to the Mexican government upon the subject, with a view to avert from young Coombs, if he should be alive, the dangers to which he may be or may have been exposed. You will state that, from the respectability of his family and

for other reasons, there can be no ground for the belief that he would have accompanied the expedition for any other objects than those mentioned; and that, if he had been aware that the views of the Texan government in despatching it had been hostile or predatory, rather than friendly and commercial, as they were understood to have been at the time, he would not have gone in its company. If to this it be objected that the expedition was military in its array, and must, therefore, be presumed to have had warlike designs against the Mexican authorities, it may be answered that the avowed motive of the members of the expedition in bearing arms was to ward off the attacks of hostile Indians, and especially of the Camanches, who, it is well known, roam in great force along and across the track which was to have been pursued. This objection would apply with much less, if with any, force to young Coombs, as he was no soldier, and had never been one; and, if found with arms, there could in his case be no better ground for the opinion that they were to have been used for purposes of attack, and not for those of defence, than if he had accompanied one of the caravans from Missouri to Santa Fé, by means of which, as is well known, an extensive trade is carried on between this country and Mexico, to the mutual advantage of the parties.

Although young Coombs is the only American citizen who accompanied the expedition for whom the interference of this government has been asked, it is understood that there was another who as little deserves to be subjected to any penal proceedings on the part of the Mexican government. This is Mr. George W. Kendall, of New Orleans.

You will press this case with the utmost earnestness on the Mexican government, as the government of the United States feels itself bound to interfere, and to signify its confident expectation that the lives of American citizens will not be sacrificed who have not intentionally done any thing of a hostile character against Mexico. Even if the conduct of young Coombs was indiscreet and ill-judged, yet this government cannot suppose that the government of Mexico would treat him as an armed combatant found among its enemies.

You will spare no pains to impress the Mexican authorities with the feelings which would be excited in this country if any harsh proceeding should be adopted toward this youth.



You will avail yourself of the opportunity of making to that government this communication, to suggest that, while this government is disposed to maintain with strict fidelity amicable relations with the Mexican republic, and will not attempt to screen from merited punishment any of our citizens who may be guilty of an infraction of the laws intended to preserve those relations, yet that summary, sanguinary, or undue punishment of either Texans or citizens of the United States in Mexico inevitably tends to excite and foment in this country an acerbity of feeling against Mexico which will be much more apt to defeat the supposed objects of those punishments than if the offenders were to have a fair trial, and, if then convicted, were to be punished in some proportion to their offences. You will, however, make this suggestion in a conciliatory tone, without allowing it to be supposed that this government has any intention to dictate the policy to be adopted by that of the Mexican republic, upon this or any other subject; but, supposing their disposition toward the United States to be amicable, our wish is merely to point a way by which, it seems to us, that reciprocal disposition, as well as the integrity of the Mexican territory, may be more effectually maintained. Accustomed ourselves to regular judicial proceedings, fair and full trials, and mild punishments, the opposites of these, if exercised by other governments, always serve to check the growth of amity and good-will.

Any reasonable expenses which may be necessary to defray the charge of a special messenger from the Mexican capital to the place of captivity of young Coombs and his American associates, or for any other proper purposes necessary for their safety and liberation, will be borne by this government, and will be defrayed by you, and for them you will draw on this department, specifying in your drafts their purpose, and sending with them such vouchers as you may be able to procure.

The interest which we feel for Coombs, whose case has been particularly presented to us, and for Mr. Kendall also, will lead to the despatching of this communication in the way most likely to carry it soon to your hands.

I am, Sir, your obedient servant,

DANIEL WEBSTER.

TO POWHATAN ELLIS, ESQ., *Envoy Extraordinary, &c., Mexico.*

P. S. — Since the above was written, application has been made in behalf of Mr. J. C. Howard, a youth of nineteen years of age, who was also with the expedition, and who, we are informed, was not a citizen of Texas. You will likewise inquire into his case, and do for him any thing else which you can do with propriety.

D. W.

*Mr. Webster to Mr. Ellis.*

Department of State, Washington, January 6, 1842.

SIR, — I addressed you on the 3d instant in behalf of Franklin Coombs and Mr. Kendall, captured by the Mexican army, with the Texan expedition, near Santa Fé. The object of this is only to say (what, perhaps, you would not have failed to understand), that, if it should be found that other American citizens were made captives under like circumstances, and with similar claims to immunity and release, you will exert the same interference in their behalf.

I am, with regard, your obedient servant,

DANIEL WEBSTER.

TO POWHATAN ELLIS, ESQ., *Envoy Extraordinary, &c., Mexico.*

*Mr. Webster to Mr. Peyton.*

[PRIVATE.]

Washington, January 6, 1842.

DEAR SIR, — Your letter to the President, of the 21st of December, has been read by him with great interest and anxiety, although it was not the first communication upon the subject. Letters had been previously received from General Coombs, and information communicated from other quarters, upon which immediate steps were taken. A special messenger has been despatched from this department, with an instruction to our minister at Mexico, of which I inclose a copy. The President will interfere for the life and safety of young Coombs to the full extent of his duty. You must be aware of the delicacy of the question, at least as it presents itself to us, without more knowledge of the facts.

The President wishes the most effectual means taken, consistent with justice and propriety, to secure his safety. . . . . On receipt of this, if you should be of opinion that the object

in view would be promoted by sending a private agent from New Orleans to coöperate with the American minister in Mexico, the President is willing that such agent, to be selected by you, should be immediately despatched; and his necessary expenses will be defrayed by this department. He cannot receive any public character, as we have a minister on the spot; but the President's great desire to do all that can be done leads him to say, that, if you think a private agency might be useful, he wishes it to be instituted, and that you would select such person as you deem the fittest for such duty. He the more readily submits this part of the case to your discretion, as, before this communication shall reach New Orleans, you may very probably be in possession of much more information than has as yet reached us; and there are likely also to be many citizens of New Orleans who are acquainted at Mexico.

As this agent will have no public character, he can only act under direction of the American minister, to whom he will report himself on his arrival. And the main advantage to be expected from such agency is this: that a person of respectability and address, well acquainted with Mexico, its manners and language, and perhaps with its present authorities, and acquainted, also, with the character, family, and connections of Coombs, Kendall, and other American citizens who may be in like condition, may, by unofficial means and personal efforts, coöperate usefully with Mr. Ellis. If you think it advisable, on the whole, that such agent be employed, you will give him a copy of this letter as his instructions.

The collector of New Orleans will have instructions to convey Mr. McRae to the fittest port in Mexico, by the revenue cutter or other the most prompt mode; and if you should think it useful that such private agent as is above mentioned should proceed to Mexico, he may use the same conveyance. You will see by the inclosed, that, although not applied to by his friends, Mr. Kendall's case has not been overlooked; and it is the President's wish, that, if any other American citizen, innocently in company with the expedition, should have fallen into the hands of the Mexicans, an equal interference may be made in his behalf.

I am, &c.

DANIEL WEBSTER.

BALIE PEYTON, Esq., *United States District Attorney, New Orleans.*

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*Mr. Webster to Mr. Thompson.*

Department of State, Washington, April 5, 1842.

SIR, — I have to address you upon the subject of those citizens of the United States who were captured with the Texan expedition to Santa Fé, and who, as is believed, were not parties to that expedition, so far as it was military and hostile to Mexico, if, in fact, a hostile invasion of Mexico was among its purposes, but accompanied it only as traders, tourists, travellers, men of letters, or in other characters and capacities showing them to be *non-combatants*; but who, nevertheless, were taken and held as prisoners, compelled to undergo incredible hardships in a winter's march of two thousand miles, and at its end subjected to almost every conceivable degree of indignity and suffering.

By the law and practice of civilized nations, enemies' subjects taken in arms may be made prisoners of war; but every person found in the train of an army is not to be considered as therefore a belligerent or an enemy. In all wars, and in all countries, multitudes of persons follow the march of armies, for the purpose of traffic or from motives of curiosity, or the influence of other causes, who neither expect to be, nor reasonably can be, considered belligerents. Whoever, in the Texan expedition to Santa Fé, was commissioned or enrolled for the military service of Texas, or, being armed, was in the pay of that government, and engaged in an expedition hostile to Mexico, may be considered as her enemy, and might lawfully, therefore, be detained as prisoner of war. This is not to be doubted; and, by the general practice of modern nations, it is true that the fact of having been found in arms with others admitted to be armed for belligerent purposes raises a presumption of hostile character. In many cases, and especially in regard to European wars in modern times, it might be difficult to repel the force of this presumption. It is still, however, but a presumption; because it is nevertheless true that a man may be found in arms with no hostile intentions. He may have assumed arms for other purposes, and may assert a pacific character, with which the fact of his being more or less armed would be entirely consistent. In former and less civilized ages, cases of this sort existed without number in European society. When the peace

of communities was less firmly established by efficient laws, and when, therefore, men often travelled armed for their own defence, or when individuals, being armed according to the fashion of the age, yet often journeyed under the protection of military escorts or bodies of soldiers, the possession of arms was no evidence of hostile character, circumstances of the times sufficiently explaining such appearances consistently with pacific intentions. And circumstances of the country may repel the presumption of hostility, as well as circumstances of the times, or the manners of a particular age. The Texan expedition to Santa Fé, in traversing the vast plains between the place from which it set out and that point, was to pass through a region which no one thinks of entering and crossing without arms, for whatever purpose or with whatever intent he may undertake such enterprise. If he be a hunter, he is armed; if a trader, he is armed; and, usually, traders go in considerable bodies, that they may be the better able to defend themselves against the roaming savage tribes so constantly met with in those extensive plains. It is not uncommon, indeed, that, for their better defence, companies of traders retain the service of men at arms, who maintain military order and array along the line of their march. When such bodies are met with in countries usually traversed by them, no inference arises, from the circumstance of their being armed, of any intention on their part of using such arms for any purpose but that of defence. If tourists, or persons wearing any other similar but equally pacific character, set forth on such a journey, they are still armed; armed for subsistence as well as for defence. The fact, therefore, of being found in such a country with arms, does not prove a belligerent or hostile character, since nobody, however peaceable, is found there without arms. If, therefore, individuals armed only according to the custom of the country, but having no hostile purposes of their own, and free from all military authority or employment, fall in with or follow the march of troops proceeding toward a point of attack, these individuals are not *combatants*, and not subject to be taken and treated as prisoners. These considerations may be applied to those citizens of the United States for whose release from imprisonment the interposition of this government has been requested. One of those citizens is George Wilkins Kendall. Mr. Kendall is a

man of letters, a highly respectable citizen of New Orleans, and was the editor of a literary publication carried on at that place. He was fond of travel at those seasons of the year when most persons who are able leave the city; and having, in all previous tours, made himself acquainted with all parts of his own country, and learning, early in the spring of 1841, that a *trading* expedition would start from Texas to Santa Fé about the 1st of May, he resolved on joining it, as a pleasure excursion of a novel and interesting character. His departure and his intentions were publicly announced in the paper with which he was concerned at the time of his setting forth. His object was declared to be to take a personal glance over this broad expanse of country, and, thus spending the summer, to return either by Missouri or by the way of Lower Mexico, by the usual time when citizens return to New Orleans for the fall business. The expedition, though having a military equipment, was represented to him as entirely commercial in its character, its object being, as was asserted, to turn the rich Chihuahua trade into the Texan channel. Mr. Kendall was no soldier, no revolutionary adventurer, but a man of respectable connections, engaged in prosperous business, and fond of the enjoyments of intellectual and social life. It is hardly possible that such a gentleman should have left such a condition to form part of a military expedition, subjecting himself to all its hazards and all its results, in an attempt to subjugate by force of arms a Mexican province five hundred or a thousand miles from his home and his connections.

Before leaving New Orleans, he obtained a passport from the Mexican vice-consul at that city. This fact, although it appears to have been denied, is proved by the testimony of Mr. Falconer and Mr. Van Ness. They can hardly be mistaken; but further evidence on this point may probably be in your possession before this despatch reaches you. He armed himself before leaving home, as any other person, of however pacific character, would arm himself for such a tour. Such was Mr. Kendall's character, such were his objects, and such the circumstances under which he joined the ill-fated expedition.

Several other prisoners appear, from the circumstances, to have been as little engaged in any hostile design as Mr. Kendall. John Tompkins is represented to be a citizen of the Unit-

ed States, from Greene County, Illinois, where his family, consisting of a wife and five children, still reside. He is a saddler by trade, but left the United States with merchandise for Texas just in time to join the expedition to Santa Fé. His health was delicate, and his object was to improve it, to dispose of his merchandise in order to defray his expenses, and to return to the place of his abode by the way of St. Louis.

David Snively is a man somewhat advanced in life, who belongs to the State of Ohio, where he has a wife and several children. He went with the expedition as a trader, and had a considerable amount of merchandise with him.

H. R. Buchanan, of Tennessee, went also as a trader, and took with him property of value, which was taken from him. He had arrived in Texas only a month before the expedition set out, and accompanied it with his own pack-mules and a servant.

L. B. Sheldon is a member of the Mississippi bar, who accompanied the expedition as a traveller only. He had with him a small amount in merchandise, from the sale of which he expected to defray his travelling expenses. He had gone to Texas in March, 1841, on business which he presumed would not detain him longer than two months, but he subsequently resolved to join the expedition for the purpose above mentioned.

Two persons by the name of Howard were among the captives, natives of and residents in this city or its neighborhood. They are represented as traders, who had with them merchandise to the amount of eight or ten thousand dollars.

Thomas S. Terry, of Hartford, in Connecticut, is believed to have gone to Texas in December, 1840, and, being a trader, joined the expedition for the sake of protection against the Indians or other freebooters. He did not intend to return to Texas, but to trade at Santa Fé, and between that place and St. Louis.

The circumstances of others who have applied for the interposition of this government are less precisely known. Whatever evidence may be in this department, or shall be received hereafter, respecting them, will be forwarded to you.

A demand for Mr. Kendall's release from confinement, as well as that of others under equally innocent circumstances, has been made by the minister of the United States at Mexico, and you will see the correspondence between that minister and the Mex-

ican Secretary of State. That correspondence, as you will observe, is principally confined to the case of Mr. Kendall.

The Mexican Secretary objects to his release from confinement, because he was united with the invading enemies of that country, in whose company he was taken, and under whose protection he was journeying; and because the entrance of foreigners into Mexico by the Texan frontier, being prohibited by a Mexican law, even when such foreigners might be travelling alone, the prohibition ought to be more strict and severe in the case of their entering by the side of soldiers coming to invade the country. Because, also, Mr. Kendall was an agent of the Texans, or, at least, a member of the expedition to New Mexico; in proof of which, a passage, in the following words, is quoted from the *New Orleans Picayune* of the 21st of December last: "A Captain Lewis was one of the commissioners, and the other was Mr. Kendall, editor of the *Picayune*."

The Secretary proceeds to assert, that those who join invaders ought to be involved in their fate in respect to such warlike measures as it may be necessary to take to repel such invaders; and that, in affairs of this nature, all the presumptions are against him who associates himself with an enemy, in whose company he is made a prisoner, whatever his intentions may have been. The Secretary states, further, that, if Mr. Kendall was ignorant of the Mexican law referred to, it is well known not to be allowable to plead ignorance of any law which had properly been made public. But, supposing that he was ignorant of the law, the circumstances of his case, he argues, were such that its text could not be literally followed; for the penalty mentioned was intended to apply to one or two persons only, and those without hostile accompaniments, who might present themselves on the frontier; and that the law did not deprive the Mexican government of the right of self-preservation, a right derived from the law of nature and nations. The Secretary then alludes to documents in the possession of his government, which, he says, place Mr. Kendall's conduct in a more serious light; but those documents are neither produced nor described. The Secretary denies that the paragraph quoted from the newspaper was the ground of the proceeding of his government; but says that, proceeding as the paragraph did from Mr. Kendall's partners in business, it might be considered as impartial, and



served to strengthen the presumptions against him. He denies that it is the duty of his government to allow Mr. Kendall the benefit of the context of the article from which the paragraph supposed to inculcate him had been quoted, although the extract may be used against him. He endeavors to prove himself correct in calling Mr. Kendall a commissioner of the Texans, and proceeds to define what he understands a commissioner to be. If Mr. Kendall had a passport, that, he admits, would be *prima facie* evidence in his favor; and that, if it should be ascertained that he had an unconditional passport, which had been destroyed by an officer of the Mexican army, he should be set at liberty, and that measures had been taken to ascertain these facts.

These reasons appear to be either unfounded in fact, or, if true, to furnish no sufficient ground for regarding Mr. Kendall as a belligerent enemy, or for declining to comply with the demand made by this government in his behalf.

In the first place, it is said that he was united with the invading enemies of the country, in whose company he was taken, and under whose protection he was journeying. That he travelled with the Texans, is true; but, as has been already said, that fact alone does not constitute him a combatant. It may furnish, in the first instance, a presumption that he was so; but such a presumption may be repelled, and is fully repelled, by the circumstances of the case. There would be no meaning in that well-settled principle of the law of nations which exempts men of letters and other classes of non-combatants from the liability of being made prisoners of war, if it were an answer to every claim for such exemption to say that the person making it was united with a military force, or journeying under its protection.

As to the assertion that it is against the law of Mexico for foreigners to pass into it across the line of Texas, it is with no little surprise that the Mexican Secretary of State is found to assign this reason for making Mr. Kendall a prisoner. The direction of that law is only to prohibit the traveller's entrance, or to send him back if he does enter. It has no penalty of chains, dungeons, or condemnation to the public works. And the Mexican Secretary himself sufficiently shows that this law has no application to the case, because, he says, it was intended only for the case of one, two, or a few individuals.

Having quoted this law, and then finding that, in its just import, it furnished no authority for the treatment which these citizens of the United States had received, the Mexican Secretary appears to treat the subject as if this law had been set up to assist their claim for liberation; while, in truth, all that Mr. Ellis did, in this respect, was to say, that, if that law governed the case, then no penalty, no punishment, and no treatment of the prisoners could be justified but such as had been prescribed by that law; and thereupon the Secretary adroitly denied that the law applies to the case at all. In this he is no doubt quite right.

As to the assertion that Mr. Kendall was an agent of the Texans, or a member, properly speaking, of the expedition, and the reference, *in proof* of this assertion, to the article in the newspaper with which he was connected, all this was founded in misconstruction, as you will see, of the true import of the article itself, even if a newspaper paragraph were fit to be regarded in such a case. In the article, Mr. Kendall had been called an "avant-courier," merely to signify that he went forward, in approaching Santa Fé, in advance of the rest of the party. If others went forward for other purposes, he might still, in pursuance of his own objects, go with them. But Mr. Kendall not being responsible for this article, or shown to have had any knowledge of it, it cannot be of the least force against him, whatever may be its import.

The Secretary says, finally, that being found in company with an enemy raises a presumption against the party; but the Secretary does not say that this presumption may not be rebutted. Why, indeed, does he call it a presumption, unless he means that it is a thing calling for explanation, and which may be explained? It is explained, fully and completely. Mr. Kendall, as we think, brings himself clearly within the exemption of the law of nations, as practised in modern times; and to insist on presumptions, and to give them the force of conclusive proofs, in defiance of all repelling proofs, is to render that law, in its application to cases of this kind, null and void. If it be admitted that, *primâ facie*, the presumption is against Mr. Kendall, has he not repelled it? He has made an effort to do so; but, instead of meeting this effort by argument, and the proofs which support it by opposite proofs, the Secretary appears to

content himself with stating, that such is the legal presumption ; thus wholly avoiding the true point of the case. This government thinks that the facts stated and proved show Mr. Kendall to have been no party to the military expedition of Texas ; to have had no hostile intention against Mexico ; to have entered her territory for no purpose of assisting to make war on her citizens, dismember her provinces, or overturn her government.

It does not very satisfactorily appear, from any correspondence or information now in this department, in what light Mexico looks upon those persons made prisoners at Santa Fé, whom she has a right to consider as engaged in the service of Texas, and therefore as her enemies. We must presume that she means to regard them as prisoners of war. There is a possibility, however, that a different mode of considering them may be adopted, and that they may be thought to be amenable to the municipal laws of Mexico. Any proceeding founded on this idea would undoubtedly be attended with the most serious consequences. It is now several years since the independence of Texas, as a separate government, has been acknowledged by the United States, and she has since been recognized in that character by several of the most considerable powers of Europe. The war between her and Mexico, which has continued so long, and with such success, that for a long time there has been no hostile foot in Texas, is a public war, and as such it has been and will be regarded by this government. It is not now an outbreak of rebellion, a fresh insurrection, the parties to which may be treated as rebels. The contest, supposed, indeed, to have been substantially ended, has at least advanced far beyond that point. It is a public war, and persons captured in the course of it, who are to be detained at all, are to be detained as prisoners of war, and not otherwise.

It is true that the independence of Texas has not been recognized by Mexico. It is equally true that the independence of Mexico has only been recently recognized by Spain ; but the United States having acknowledged both the independence of Mexico before Spain acknowledged it, and the independence of Texas although Mexico has not yet acknowledged it, stands in the same relation toward both those governments, and is as much bound to protect its citizens in a proper intercourse with Texas against injuries by the government of Mexico, as it

would have been to protect such citizens in a like intercourse with Mexico against injuries by Spain. The period which has elapsed since Texas threw off the authority of Mexico is nearly as long as the whole duration of the Revolutionary war of the United States. No effort for the subjugation of Texas has been made by Mexico, from the time of the battle of San Jacinto, on the 21st day of April, 1836, until the commencement of the present year, and during all this period Texas has maintained an independent government, carried on commerce, and made treaties with nations in both hemispheres, and kept aloof all attempts at invading her territory. If, under these circumstances, any citizen of the United States, in whose behalf this government has a right on any account or to any extent to interfere, should, on a charge of having been found with an armed Texan force acting in hostility to Mexico, be brought to trial and punished as for a violation of the municipal laws of Mexico, or as being her subject engaged in rebellion, after his release has been demanded by this government, consequences of the most serious character would certainly ensue. You will, therefore, not fail, should any indication render it necessary, to point out distinctly to the government of Mexico the dangers, should the war between her and Texas continue, of considering it, so far as citizens of the United States may be concerned, in any other light than that of a public national war, in the events and progress of which prisoners may be made on both sides, and to whose condition the law and usages of nations respecting prisoners of war are justly applicable.

And this makes it proper that I should draw your particular attention to the manner in which the persons taken near Santa Fé have been treated, as we are informed.

Mr. Kendall, and other persons with him, having been carried to Santa Fé from the place of capture, were there deprived of their arms. To this there can be no objection, if we consider them as prisoners of war, because prisoners of war may be lawfully disarmed by the captor; but they were also despoiled, not only of every article of value about their persons, but of their clothing also, their coats, their hats, their shoes, things indispensable to the long march before them. If these facts be not disproved, they constitute an outrage by the local authorities of Mexico for which there can be no apology. The privations

and indignities to which they were subjected, during their march of two thousand miles to the city of Mexico, at the most inclement season of the year, were horrible, and, if they were not well authenticated, it would have been incredible that they should have been inflicted in this age, and in a country calling itself Christian and civilized. During many days they had no food, and on others only two ears of corn were distributed to each man. To sustain life, therefore, they were compelled to sell, on the way, the few remnants of clothing which their captors had left them; but by seeking thus to appease their hunger, they increased the misery which they already endured from exposure to the cold. Most dreadful of all, however, several of them, disabled by sickness and suffering from keeping up with the others, were deliberately shot, without any provocation. Those who survived to their journey's end were, many of them, afflicted with loathsome disease; and those whose health was not broken down have been treated, not as the public law requires, but in a manner harsh and vindictive, and with a degree of severity equal, at least, to that usually inflicted by the municipal codes of most civilized and Christian states upon the basest felons. Indeed, they appear to have been ranked with these; being thrust into the same dungeons with Mexican malefactors, chained to them in pairs, and, when allowed to see the light and breathe the air of heaven, required, as a compensation therefor, to labor, beneath the lash of a task-master upon roads and public works of that country.

The government of the United States has no inclination to interfere in the war between Mexico and Texas, for the benefit or protection of individuals, any further than its clear duties require. But if citizens of the United States who have not renounced, nor intended to renounce, their allegiance to their own government, nor have entered into the military service of any other government, have nevertheless been found so connected with armed enemies of Mexico as that they may be lawfully captured and detained as prisoners of war, it is still the duty of this government to take so far a concern in their welfare, as to see that, as prisoners of war, they are treated according to the usage of modern times and civilized states.

Indeed, although the rights or the safety of none of their own citizens were concerned, yet, if, in a war waged between two

neighboring states, the killing, enslaving, or cruelly treating of prisoners should be indulged, the United States would feel it to be their duty, as well as their right, to remonstrate and to interfere against such a departure from the principles of humanity and civilization. These principles are common principles, essential alike to the welfare of all nations, and in the preservation of which all nations have, therefore, rights and interests. But their duty to interfere becomes imperative in cases affecting their own citizens.

It is therefore that the government of the United States protests against the hardships and cruelties to which the Santa Fé prisoners have been subjected. It protests against this treatment in the name of humanity and the law of nations; in the name of all Christian states; in the name of civilization and the spirit of the age; in the name of all republics; in the name of Liberty herself, enfeebled and dishonored by all cruelty and all excess; in the name of, and for the honor of, this whole hemisphere. It protests emphatically and earnestly against practices belonging only to barbarous people in barbarous times,

By the well-established rules of national law, prisoners of war are not to be treated harshly, unless personally guilty toward him who has them in his power; for he should remember that they are men, and unfortunate.

When an enemy is conquered, and submits, a great soul forgets all resentment, and is entirely filled with compassion for him. This is the humane language of the law of nations; and this is the sentiment of high honor among men. The law of war forbids the wounding, killing, impressment into the troops of the country, or the enslaving or otherwise maltreating of *prisoners of war*, unless they have been guilty of some grave crime; and from the obligation of this law no civilized state can discharge itself.

Every nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself also to the strict and faithful observance of all those principles, laws, and usages which have obtained currency among civilized states, and which have for their object the mitigation of the miseries of war.

No community can be allowed to enjoy the benefit of na-

tional character, in modern times, without submitting to all the duties which that character imposes. A Christian people, who exercise sovereign power, who make treaties, maintain diplomatic relations with other states, and who should yet refuse to conduct their military operations according to the usages universally observed by such states, would present a character singularly inconsistent and anomalous.

This government will not hastily suppose that the Mexican republic will assume such a character.

There is yet another very important element arising out of the facts of this case.

It is asserted and believed, that the surrender of some of the persons connected with the expedition was made upon specific terms, which were immediately violated by the local Mexican authorities. If there is one rule of the law of war more clear and peremptory than another, it is that compacts between enemies, such as truces and capitulations, shall be faithfully adhered to; and their non-observance is denounced as being manifestly at variance with the true interest and duty, not only of the immediate parties, but of all mankind. Consequently, if the surrender of the expedition, or any part of it, was conditional, the benefit of those conditions must be insisted upon in favor of Mr. Kendall.

According to the statement of Messrs. Falconer and Van Ness, Mr. Kendall proceeded two hundred miles in advance of the main body, and was taken with his companions while they were displaying a flag of truce; and the persons who took them gave assurances that they should not be held as prisoners of war. Here, then, was a special immunity promised, but afterward notoriously withheld, as we are bound to believe in the present state of our information upon the subject. If, therefore, this government were not entitled to demand Mr. Kendall's release on the grounds of his having been a non-combatant and a neutral, it might require the government of Mexico to take care that the stipulation of its authorized agents to that effect be scrupulously fulfilled, and that, on this account, those to whom the promise was made should be immediately released, according to that promise.

In conclusion, I am directed by the President of the United States now to instruct you, that, on the receipt of this despatch,

you inquire carefully and minutely into the circumstances of all those persons who, having been taken near Santa Fé, and having claimed the interposition of this government, are still held as prisoners in Mexico; and you will demand of the Mexican government the release of such of them as appear to have been innocent traders, travellers, invalids, men of letters, or for any other reason justly esteemed non-combatants, being citizens of the United States. To this end it may be proper to direct the consul to proceed to the places where any of them may be confined, and to take their statements under oath, as also the statements of other persons to whom they may respectively refer. If the Mexican government deny facts upon which any of the parties claim their release, and desire time for further investigation of their respective cases, or any of them, proper and suitable time must be allowed; but if any of the persons described in the next preceding paragraph, and for whose release you will have made a demand, shall still be detained, for the purpose of further inquiry or otherwise, you will then explicitly demand of the Mexican government that they be treated henceforward with all the lenity which, in the most favorable cases, belongs to the rights of prisoners of war; that they be not confined in loathsome dungeons, with malefactors and persons diseased; that they be not chained or subjected to ignominy, or to any particular rigor in their detention; that they be not obliged to labor on the public works, or put to any other hardship. You will state to the Mexican government that the government of the United States entertains a conviction that these persons ought to be set at liberty without delay; that it will feel great dissatisfaction if it shall still learn that Mr. Kendall, whose case has already been made the subject of an express demand, and others of equal claims to liberation, be not set at liberty at the time when you receive this despatch; but that, if the government of Mexico insists upon detaining any of them for further inquiry, it is due to the government of the United States, to its desire to preserve peace and harmony with Mexico, and to justice and humanity, that, while detained, these persons should enjoy to the fullest extent the rights of prisoners of war; and that it expects that a demand so just and reasonable, a demand respectfully made by one friendly state to another, will meet with immediate compliance. Having made



this demand, you will wait for an answer; and if within ten days you shall not receive assurances that all the persons above mentioned, who may still be detained, will be thenceforward treated in the same manner which has now been insisted upon, you will hold no further official intercourse with the government of Mexico until you shall receive further directions from your own government. You will thereupon communicate with this department, detaining for that purpose the messenger who carries this. In your communication you will state, as fully and as accurately as possible, the circumstances of each man's case, as they may appear by all the evidence which at that time may be possessed by the legation. In making your demand for the better treatment of the prisoners, you will take especial care not to abandon or weaken the claim for their release, nothing more being intended in that respect than that proper time should be allowed to the government of Mexico to make such further inquiries as may be necessary.

Your predecessor has already been directed, that, if any of the persons suffer for the want of the common necessities of life, he should provide for such wants until otherwise supplied; a direction which you will also observe.

I am, Sir, your obedient servant,

DANIEL WEBSTER.

WADDY THOMPSON, Esq., &c., &c., &c.

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#### INDEPENDENCE OF TEXAS.

*Message from the President of the United States, transmitting Copies of Papers upon the Subject of the Relations between the United States and the Mexican Republic, July 14, 1842.*

TO THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES:

In answer to the resolution of the House of Representatives of the 12th instant, requesting copies of papers upon the subject of the relations between the United States and the Mexican Republic, I transmit a report from the Secretary of State, and the documents by which it was accompanied.

JOHN TYLER.

Washington, July 14, 1842.

TO THE PRESIDENT OF THE UNITED STATES :

SIR, — The Secretary of State, to whom was referred the resolution of the House of Representatives of yesterday, requesting the President to cause to be communicated to that House, so far as might be compatible with the public interest, copies of all the correspondence between the governments of the United States and of Mexico since the appointment of the present Envoy Extraordinary and Minister Plenipotentiary of the United States to Mexico, of the instructions given to that minister at and since his departure upon his mission, and of his despatches to this government, and particularly of any complaint of the government of Mexico alleging the toleration by the government of the United States of hostile interference by their citizens in the war between Mexico and Texas, and of any answer on the part of this government to such complaint, has the honor to lay before the President the accompanying papers.

All which is respectfully submitted.

DANIEL WEBSTER.

Department of State, Washington, July 13, 1842.

*M. Velazquez de Leon to Mr. Webster.*

[TRANSLATION.]

New York, June 24, 1842.

The undersigned, in addressing the Hon. Daniel Webster, Secretary of State, has the honor to inform him that, although he holds in his power the appointment and credentials for presenting himself and acting as Chargé d'Affaires of Mexico in the United States, he has not thought proper to present himself for that purpose, until he had received the answer to the observations which he had addressed to his own government on that subject; but as he has received recently, and during this delay, the two annexed documents for his Excellency the President and the Hon. Daniel Webster, he hastens to send them on, in order that, upon their arriving as soon as possible at their destination, the honorable Secretary of State may give such answer as the government of the United States may judge proper; which answer the undersigned will transmit to the Mexican government, according to his instructions to that effect.

The undersigned avails himself of this occasion to renew to

the Hon. Daniel Webster, Secretary of State, the assurances of his high consideration.

JOAQUIN VELAZQUEZ DE LEON.

HON DANIEL WEBSTER, *Secretary of State.*

*Mr. Webster to M. Velazquez de Leon.*

Department of State, Washington, June 29, 1842.

SIR, — Your letter of the 24th of this month, transmitting one addressed to this department by the Secretary of State and Foreign Relations of the Mexican Republic, was duly received.

The President has long desired to see here a representative of that government, the residence of such a functionary being esteemed likely to foster and promote the peace and interests of the two countries. We are happy to hear that an appointment has at length been made; and all just respect will be paid to your credentials, when it shall be your pleasure to present them. Until such presentment be made, however, no regular diplomatic intercourse can be had between this department and yourself. Whatever answer may be judged proper to the letter of M. de Bocanegra to this department will be transmitted through the minister of the United States at Mexico.

I am, Sir, your obedient servant,

DANIEL WEBSTER.

SEÑOR DON JOAQUIN VELAZQUEZ DE LEON.

*M. de Bocanegra to Mr. Webster.*

[TRANSLATION.]

National Palace, Mexico, May 12, 1842.

The undersigned, Secretary of State and Foreign Relations, enjoys the satisfaction of addressing the honorable Secretary of State of the United States of America, in the name and by the express order of his Excellency the President of the Mexican Republic. The relations of amity and good harmony which have happily subsisted between this and your great nation might have been disturbed in a lamentable manner, since the year 1835, when the revolution of Texas broke out, if the Mexican government had not given so many evidences of its forbearance, and had not made so many and so great sacrifices for the sake of peace, in order that the world might not, with pain and

amazement, see the two nations which appear to be destined to establish the policy and the interests of the American continent divided and ravaged by the evils of war.

But from that truly unfortunate period, the Mexican republic has received nothing but severe injuries and inflictions from the citizens of the United States. The Mexican government speaks only of the citizens of the United States, as it still flatters itself with the belief that it is not the government of that country which has promoted the insurrection in Texas, which has favored the usurpation of its territory, and has supplied the rebels with ammunition, arms, vessels, money, and recruits; but that these aggressions have proceeded from private individuals, who have not respected the solemn engagements which bind together the two nations, nor the treaties concluded between them, nor the conduct, ostensibly frank, of the Cabinet of Washington.

It is, however, notorious, that the insurgent colonists of that integral part of the territory of the Mexican republic would have been unable to maintain their prolonged rebellion without the aid and the efficient sympathies of citizens of the United States, who have publicly raised forces in their cities and towns; have fitted out vessels in their ports, and laden them with munitions of war; and have marched to commit hostilities against a friendly nation, under the eyes and with the knowledge of the authorities to whom are intrusted the fulfilment of the law.

The Mexican government entertains so high an opinion of the force of the government of the United States, and of its power to restrain those its subjects from violating the religious faith of treaties, solemnly concluded between it and other nations, and from committing hostilities against such nations in time of peace, that it cannot easily comprehend how those persons have been able to evade the punishment decreed against them by the laws of the United States themselves, and to obtain that quiet impunity which incessantly encourages them to continue their attacks. It is well worthy of remark, that no sooner does the Mexican government, in the exercise of its rights, which it cannot and does not desire to renounce, prepare means to recover a possession usurped from it, than the whole population of the United States, especially in the Southern

States, is in commotion; and in the most public manner a large portion of them is turned upon Texas, in order to prevent the rebels from being subjected by the Mexican arms, and brought back to proper obedience.

Could proceedings more hostile, on the part of the United States, have taken place, had that country been at war with the Mexican republic? Could the insurgents of Texas have obtained a coöperation more effective or more favorable to their interests? Certainly not. The civilized world looks on with amazement, and the Mexican government is filled with unspeakable regret, as it did hope, and had a right to hope, that, living in peace with the United States, your government would preserve our territory from the invasions of your own subjects. The vicinity of a friend is an advantage rather than an inconvenience; but if one neighbor oversteps the sacred limits imposed by treaties, and disturbs and harasses another, it cannot be maintained that the friendship of the former is real, and that much confidence should be placed in it.

The government of the Mexican republic, therefore, which regards the faithful fulfilment of treaties as its highest obligation, and anxiously desires to preserve and increase its friendly relations with the people and the government of the United States, finds itself under the necessity of protesting solemnly against the aggressions which the citizens of those States are constantly repeating upon the Mexican territory, and of declaring, in a positive manner, that it considers as a violation of the treaty of amity the toleration of a course of conduct which produces an incomprehensible state of things,—a state neither of peace nor war,—but inflicting upon the Mexican republic the same injuries and inconveniences as if war had been declared between the two nations, which are called by Providence to form with each other relations and bonds of extreme and cordial friendship.

And the undersigned, in complying with this order from the most excellent Provisional President of the Republic of Mexico, assures you, Sir, of the high consideration with which he remains your obedient servant.

J. M. DE BOCANEGRA.

HON DANIEL WEBSTER, *Secretary of State of the United States of America.*

*Mr. Webster to Mr. Thompson.*

Department of State, Washington, July 8, 1842.

SIR, — On the 29th of last month a communication was received at this department from M. de Bocanegra, Secretary of State and Foreign Relations of the government of Mexico, having been forwarded through the agency of M. Velazquez de Leon, at New York, who informed the department, by a letter accompanying that of M. de Bocanegra, that he had been appointed Chargé d'Affaires of the Mexican republic to this government, although he had not yet presented his credentials. M. de Bocanegra's letter is addressed to the Secretary of State of the United States, and bears date the 12th of May. A copy, together with a copy of the communication from M. Velazquez de Leon, transmitting it, and of the answer to M. Velazquez de Leon from this department, you will receive herewith. Upon the receipt of this despatch, you will immediately address a note to M. de Bocanegra, in which you will say, that

The Secretary of State of the United States has received a letter addressed to him by M. de Bocanegra, under date of the 12th of May, and transmitted to the Department of State at Washington through the agency of M. Velazquez de Leon, at New York, who informs the government of the United States that he has been appointed Chargé d'Affaires of the Mexican republic, although he has not presented his letter of credence.

The government of the United States sees with regret the adoption, on this occasion, of a form of communication quite unusual in diplomatic intercourse, and for which no necessity is known. An envoy extraordinary and minister plenipotentiary of the United States, fully accredited to the government of Mexico, was at that moment in its capital, in the actual discharge of his functions, and ready to receive on behalf of his government any communication which it might be the pleasure of the President of the Mexican republic to make to it. And it is not improper here to add, that it has been matter of regret with the government of the United States, that, while, being animated by a sincere desire at all times to cultivate the most amicable relations with Mexico, it has not failed to maintain

near that government a mission of the highest rank known to its usages, Mexico, for a long time, has had no representative near the government of the United States.

But the manner of the communication from M. de Bocanegra, however novel and extraordinary, is less important than its contents and character, which surprise the government of the United States by a loud complaint of the violation of its neutral duties. M. de Bocanegra, speaking, as he says, by the express order of the President of the Mexican republic, declares that the amicable relations between the two countries might have been lamentably disturbed since the year 1835, when the revolution in Texas broke out, had not Mexico given so many evidences of its forbearance, and made so many and so great sacrifices for the sake of peace, in order that the world might not see, with pain and amazement, two nations which appear destined to establish the policy and interests of the American continent divided and ravaged by the evils of war.

The language implies that such has been the conduct of the United States towards Mexico, that war must have ensued before the present time, had not Mexico made great sacrifices to avoid such a result; a charge which the government of the United States utterly denies and repels. It is wholly ignorant of any sacrifices made by Mexico in order to preserve peace, or of any occasion calling on its government to manifest uncommon forbearance. On the contrary, the government of the United States cannot but be of opinion, that, if the history of the occurrences between the two governments, and the state of things at this moment existing between them, be regarded, both the one and the other will demonstrate that it is the conduct of the government of the United States which has been marked, in an especial manner, by moderation and forbearance. Injuries and wrongs have been sustained by citizens of the United States, not inflicted by individual Mexicans, but by the authority of the government; for which injuries and wrongs, numerous as they are, and outrageous as is the character of some of them, and acknowledged as they are by Mexico herself, redress has been sought only by mild and peaceable means, and no indemnity asked but such as the strictest justice imperatively demanded. A desire not to disturb the peace and harmony of the two countries has led the government of the United States

to be content with the lowest measure of remuneration. Mexico herself must admit, that, in all these transactions, the conduct of the United States toward her has been signalized, not by the infliction of injuries, but by the manifestation of a friendly feeling and a conciliatory spirit.

The government of the United States will not be unjust in its sentiments toward Mexico; it will not impute to its government any desire to disturb the peace; it acquits it of any design to spread the ravages and horrors of war over the two countries; and it leaves it to Mexico herself to avow her own motives for her pacific policy, if she have any other motive than those of expediency and justice; provided, however, that such avowal of her motives carry with it no imputation or reflection upon the good faith and honor of the United States.

The revolution in Texas, and the events connected with it and springing out of it, are M. de Bocanegra's principal topic; and it is in relation to these that his complaint is founded. His government, he says, flatters itself that the government of the United States has not promoted the insurrection in Texas, favored the usurpation of its territory, or supplied the rebels with vessels, ammunition, and money. If M. de Bocanegra intends this as a frank admission of the honest and cautious neutrality of the government of the United States in the contest between Mexico and Texas, he does that government justice, and no more than justice; but if the language be intended to intimate an opposite and a reproachful meaning, that meaning is only the more offensive for being insinuated rather than distinctly avowed. M. de Bocanegra would seem to represent that, from 1835 to the present time, citizens of the United States, if not their government, have been aiding rebels in Texas in arms against the lawful authority of Mexico. This is not a little extraordinary. Mexico may have chosen to consider, and may still choose to consider, Texas as having been at all times, since 1835, and as still continuing, a rebellious province; but the world has been obliged to take a very different view of the matter. From the time of the battle of San Jacinto, in April, 1836, to the present moment, Texas has exhibited the same external signs of national independence as Mexico herself, and with quite as much stability of government. Practically free and independent, acknowledged as a political sover-



eignty by the principal powers of the world, no hostile foot finding rest within her territory for six or seven years, and Mexico herself refraining, for all that period, from any further attempt to reëstablish her own authority over that territory, it cannot but be surprising to find M. de Bocanegra complaining, that, for that whole period, citizens of the United States, or its government, have been favoring the rebels of Texas, and supplying them with vessels, ammunition, and money, as if the war for the reduction of the province of Texas had been constantly prosecuted by Mexico, and her success prevented by these influences from abroad!

The general facts appertaining to the settlement of Texas, and the revolution in its government, cannot but be well known to M. de Bocanegra. By the treaty of the 22d of February, 1819, between the United States and Spain, the Sabine was adopted as the line of boundary between the two powers. Up to that period, no considerable colonization had been effected in Texas; but the territory between the Sabine and the Rio Grande being confirmed to Spain by the treaty, applications were made to that power for grants of land; and such grants, or permissions of settlement, were, in fact, made by the Spanish authorities in favor of citizens of the United States proposing to emigrate to Texas in numerous families, before the declaration of independence by Mexico. And these early grants were confirmed, as is well known, by successive acts of the Mexican government, after its separation from Spain. In January, 1823, a national colonization law was passed, holding out strong inducements to all persons who should incline to undertake the settlement of uncultivated lands; and although the Mexican law prohibited for a time citizens of foreign countries from settling, as colonists, in territories immediately adjoining such foreign countries, yet even this restriction was afterward repealed or suspended; so that, in fact, Mexico, from the commencement of her political existence, held out the most liberal inducements to emigrants into her territories, with full knowledge that these inducements were likely to act, and expecting they would act, with the greatest effect upon citizens of the United States, especially of the Southern States, whose agricultural pursuits naturally rendered the rich lands of Texas, so well suited to their accustomed occupation, objects of desire to them. The

early colonists of the United States, introduced by Moses and Stephen Austin under these inducements and invitations, were persons of most respectable character, and their undertaking was attended with very severe hardships, occasioned in no small degree by the successive changes in the government of Mexico. They nevertheless persevered, and accomplished a settlement. And, under the encouragements and allurements thus held out by Mexico, other emigrants followed, and many thousand colonists from the United States and elsewhere had settled in Texas, within ten years from the date of Mexican independence. Having some reason to complain, as they thought, of the government over them, and especially of the aggressions of the Mexican military stationed in Texas, they sought relief by applying to the supreme government for the separation of Texas from Coahuila, and for a local government for Texas itself. Not having succeeded in this object, in the process of time, and in the progress of events, they saw fit to attempt an entire separation from Mexico, to set up a government of their own, and to establish a political sovereignty. War ensued; and the battle of San Jacinto, fought on the 21st of April, 1836, achieved their independence. The war was from that time at an end, and in March following the independence of Texas was formally acknowledged by the government of the United States.

In the events leading to the actual result of these hostilities the United States had no agency, and took no part. Its government had, from the first, abstained from giving aid or succor to either party. It knew its neutral obligations, and fairly endeavored to fulfil them all. It acknowledged the independence of Texas only when that independence was an apparent and an ascertained fact; and its example in this particular has been followed by several of the most considerable powers of Europe.

It has been sometimes stated, as if for the purpose of giving more reason to the complaints of Mexico, that, of the military force which acted against Mexico with efficiency and success in 1836, a large portion consisted of volunteers then fresh from the United States. But this is a great error. It is well ascertained, that, of those who bore arms in the Texan ranks in the battle of San Jacinto, three fourths, at least, were colonists, invited into Texas by the grants and the colonization laws of

Mexico, and called to the field by the exigencies of the times, in 1836, from their farms and other objects of private pursuit.

M. de Bocanegra's complaint is twofold. First, that citizens of the United States have supplied the rebels in Texas with ammunition, arms, vessels, money, and recruits; have publicly raised forces in their cities and fitted out vessels in their ports, loaded them with munitions of war, and marched to commit hostilities against a friendly nation, under the eye and with the knowledge of the public authorities of the United States. In all this M. de Bocanegra appears to forget that, while the United States are at peace with Mexico, they are also at peace with Texas; that both stand on the same footing of friendly nations; that, since 1837, the United States have regarded Texas as an independent sovereignty as much as Mexico; and that trade and commerce with citizens of a government at war with Mexico cannot, on that account, be regarded as an intercourse by which assistance and succor are given to Mexican rebels. The whole current of M. de Bocanegra's remarks runs in the same direction, as if the independence of Texas had not been acknowledged. It has been acknowledged; it was acknowledged in 1837, against the remonstrance and protest of Mexico; and most of the acts of any importance of which M. de Bocanegra complains flow necessarily from that recognition. He speaks of Texas as still being "an integral part of the territory of the Mexican republic"; but he cannot but understand that the United States do not so regard it. The real complaint of Mexico, therefore, is, in substance, neither more nor less than a complaint against the recognition of Texan independence. It may be thought rather late to repeat that complaint, and not quite just to confine it to the United States, to the exemption of England, France, and Belgium, unless the United States, having been the first to acknowledge the independence of Mexico herself, are to be blamed for setting an example for the recognition of that of Texas. But it is still true that M. de Bocanegra's specification of his grounds of complaint and remonstrance is mainly confined to such transactions and occurrences as are the natural consequence of the political relations existing between Texas and the United States. Acknowledging Texas to be an independent nation, the government of the United States of course allows and encourages lawful trade and com-

merce between the two countries. If articles contraband of war be found mingled with this commerce, while Mexico and Texas are belligerent states, Mexico has the right to intercept the transit of such articles to her enemy. This is the common right of all belligerents, and belongs to Mexico in the same extent as to other nations. But M. de Bocanegra is quite well aware that it is not the practice of nations to undertake to prohibit their own subjects, by previous laws, from trafficking in articles contraband of war. Such trade is carried on at the risk of those engaged in it, under the liabilities and penalties prescribed by the law of nations or by particular treaties. If it be true, therefore, that citizens of the United States have been engaged in a commerce by which Texas, an enemy of Mexico, has been supplied with arms and munitions of war, the government of the United States, nevertheless, was not bound to prevent it, could not have prevented it without a manifest departure from the principles of neutrality, and is in no way answerable for the consequences. The treaty of the 5th of April, 1831, between the United States and Mexico itself, shows most clearly how little foundation there is for the complaint of trading with Texas, if Texas is to be regarded as a public enemy of Mexico. The sixteenth article declares: "It shall likewise be lawful for the aforesaid citizens, respectively, to sail with their vessels and merchandise before mentioned, and to trade, with the same liberty and security, from the places, ports, and havens of those who are enemies of both or either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy before mentioned to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of the same government, or under several."

The eighteenth article enumerates those commodities which shall be regarded as contraband of war; but neither that article nor any other imposes on either nation any duty of preventing, by previous regulation, commerce in such articles. Such commerce is left to its ordinary fate, according to the law of nations. It is only, therefore, by insisting, as M. de Bocanegra does insist, that Texas is still a part of Mexico, that he can maintain any complaint. Let it be repeated, therefore, that, if the things against which he remonstrates be wrong, they have

their source in the original wrong of the acknowledgment of Texan independence. But that acknowledgment is not likely to be retracted.

There can be no doubt at all, that, for the last six years, the trade in articles contraband of war between the United States and Mexico has been greater than between the United States and Texas. It is probably greater at the present moment. Why has not Texas a right to complain of this? For no reason, certainly, but because the permission to trade, or the actual trading, by the citizens of a government, in articles contraband of war, is not a breach of neutrality.

M. de Bocanegra professes himself unable to comprehend how those persons of whom he complains have been able to evade the punishment decreed against them by the laws of the United States; but he does not appear to have a clear idea of the principles or provisions of those laws. The duties of neutral nations, in time of war, are prescribed by the law of nations, which is imperative and binding upon all governments; and nations not unfrequently establish municipal regulations for the better government of the conduct of their subjects or citizens.

This has been done by the United States, in order to maintain with greater certainty a strict and impartial neutrality pending war between other countries. And wherever a violation of neutral duties, as they exist by the law of nations, or any breach of its own laws, has been brought to the notice of the government, attention has always been paid to it.

At an early period of the Texan revolution, strict orders were given by the President of the United States to all officers on the southern and southwestern frontier, to take care that those laws should be observed; and the attention of the government of the United States has not been called to any specific violation of them since the manifestation on the part of Mexico of an intention to renew hostilities with Texas; and all officers of the government remain charged with the strict and faithful execution of these laws.

On a recent occasion, complaint was made by the representatives of Texas, that an armament was fitted out in the United States for the service of Mexico against Texas. Two vessels of war, it was alleged, built or purchased in

the United States for the use of the government of Mexico, and well understood as intended to be employed against Texas, were equipped and ready to sail from the waters of New York. The case was carefully inquired into, official examination was made, and legal counsel invoked. It appeared to be a case of great doubt; but Mexico was allowed the benefit of that doubt, and the vessels left the United States, with the whole or a part of their armament actually on board. The same administration of even-handed justice, the same impartial execution of the laws toward all parties, will continue to be observed.

If forces have been raised in the United States, or vessels fitted out in their ports for Texan service, contrary to law, no instance of which has yet come to the knowledge of the government, prompt attention will be paid to the first case, and to all cases which may be made known to it. As to advances, loans, or donations of money or goods, made by individuals to the government of Texas or its citizens, M. de Bocanegra hardly needs to be informed, that there is nothing unlawful in this, so long as Texas is at peace with the United States, and that these are things which no government undertakes to restrain. Other citizens are equally at liberty, should they be so inclined, to show their good-will toward Mexico by the same means. Still less can the government of the United States be called upon to interfere with opinions uttered in the public assemblages of a free people, accustomed to the independent expression of their sentiments, resulting in no violation of the laws of their country, or of its duties as a neutral state. Toward the United States, Mexico and Texas stand in the same relation, as independent states at war. Of the character of that war mankind will form their own opinions; and in the United States, at least, the utterance of those opinions cannot be suppressed.

The second part of M. de Bocanegra's complaint is thus stated: "No sooner does the Mexican government, in the exercise of its rights, which it cannot and does not desire to renounce, prepare means to recover a possession usurped from it, than the whole population of the United States, especially in the Southern States, is in commotion; and, in the most public manner, a large portion of them is directed upon Texas."

And how does M. de Bocanegra suppose that the government of the United States can prevent, or is bound to undertake to prevent, the people from thus going to Texas? This is emigration,—the same emigration, though not under the same circumstances, which Mexico invited to Texas before the revolution. These persons, so far as is known to the government of the United States, repair to Texas, not as citizens of the United States, but as ceasing to be such citizens, and as changing, at the same time, their allegiance and their domicile. Should they return, after having entered into the service of a foreign state, still claiming to be citizens of the United States, it will be for the authorities of the United States government to determine how far they have violated the municipal laws of the country, and what penalties they have incurred. The government of the United States does not maintain, and never has maintained, the doctrine of the perpetuity of natural allegiance. And surely Mexico maintains no such doctrine; because her actually existing government, like that of the United States, is founded in the principle that men may throw off the obligation of that allegiance to which they are born. The government of the United States, from its origin, has maintained legal provisions for the naturalization of such subjects of foreign states as may choose to come hither, make their home in the country, and, renouncing their former allegiance, and complying with certain stated requisitions, to take upon themselves the character of citizens of this government. Mexico herself has laws granting equal facilities to the naturalization of foreigners. On the other hand, the United States have not passed any law restraining their own citizens, native or naturalized, from leaving the country and forming political relations elsewhere. Nor do other governments, in modern times, attempt any such thing. It is true that there are governments which assert the principle of perpetual allegiance; yet, even in cases where this is not rather a matter of theory than practice, the duties of this supposed continuing allegiance are left to be demanded of the subject himself, when within the reach of the power of his former government, and as exigencies may arise; and are not attempted to be enforced by the imposition of previous restraint, preventing men from leaving their country.

Upon this subject of the emigration of individuals from neu-

tral to belligerent states, in regard to which M. de Bocanegra appears so indignant, we must be allowed to bring Mexico into her own presence, to compare her with herself, and respectfully invite her to judge the matter by her own principles and her own conduct. In her great struggle against Spain for her own independence, did she not open her arms wide to receive all who would come to her from any part of the world? And did not multitudes flock to her new-raised standard of liberty, from the United States, from England, Ireland, France, and Italy, many of whom distinguished themselves in her service, both by sea and land? She does not appear to have supposed that the governments of these persons, thus coming to unite their fate with hers, were, by allowing the emigration, even pending a civil war, furnishing just cause of offence to Spain. Even in her military operations against Texas, Mexico employed many foreign emigrants; and it may be thought remarkable that, in those very operations, not long before the battle of San Jacinto, a native citizen of the United States held high command in her service, and performed feats of no mean significance in Texas. Of that toleration, therefore, as she calls it, and which she now so warmly denounces, Mexico in that hour of emergency embraced the benefits eagerly, and to the full extent of her power. May we not ask, then, how she can reconcile her present complaints with her own practice, as well as how she accounts for so long and unbroken a silence upon a subject on which her remonstrance is now so loud?

Spain chose to regard Mexico only in the light of a rebellious province for near twenty years after she had asserted her own independence. Does Mexico now admit, that, for all that period, notwithstanding her practical emancipation from Spanish power, it was unlawful for the subjects and citizens of other governments to carry on with her the ordinary business of commerce, or to accept her tempting offers to emigrants? Certainly such is not her opinion.

Might it not be asked, then, even if the United States had not already and long ago acknowledged the independence of Texas, how they should be expected to wait for the accomplishment of the object, now existing only in purpose and intention, of the resubjugation of that territory by Mexico? How long, let it be asked, in the judgment of Mexico herself, is the fact of



actual independence to be held of no avail against an avowed purpose of future reconquest?

M. de Bocanegra is pleased to say, that, if war actually existed between the two countries, proceedings more hostile, on the part of the United States, could not have taken place, nor could the insurgents of Texas have obtained more effectual co-operation than they have obtained.

This opinion, however hazardous to the discernment and just estimate of things of those who avow it, is yet abstract and theoretical, and, so far, harmless. The efficiency of American hostility to Mexico has never been tried; the government has no desire to try it. It would not disturb the peace for the sake of showing how erroneously M. de Bocanegra has reasoned; while, on the other hand, it trusts that a just hope may be entertained that Mexico will not inconsiderately and needlessly hasten into an experiment by which the truth or fallacy of his sentiments may be brought to an actual ascertainment.

M. de Bocanegra declares, in conclusion, that his government finds itself under the necessity of protesting solemnly against the aggressions which the citizens of the United States are reiterating upon the Mexican territory, and of declaring, in a positive manner, that it will consider as a violation of the treaty of amity the toleration of that course of conduct, which he alleges inflicts on the Mexican republic the injuries and inconveniences of war. The President exceedingly regrets both the sentiment and the manner of this declaration. But it can admit of but one answer. The Mexican government appears to require that which could not be granted, in whatever language or whatever tone requested. The government of the United States is a government of law.

The chief executive magistrate, as well as functionaries in every other department, is restrained and guided by the Constitution and the laws of the land. Neither the Constitution, nor the laws of the land, nor principles known to the usages of modern states, authorize him to interdict lawful trade between the United States and Texas, or to prevent, or attempt to prevent, individuals from leaving the United States for Texas, or any other foreign country.

If such individuals enter into the service of Texas, or any other foreign state, the government of the United States no

longer holds over them the shield of its protection. They must stand or fall in their newly assumed character, and according to the fortunes which may betide it. But the government of the United States cannot be called upon to prevent their emigration; and it must be added, that the Constitution, public treaties, and the laws oblige the President to regard Texas as an independent state, and its territory as no part of the territory of Mexico. Every provision of law, every principle of neutral obligation, will be sedulously enforced in relation to Mexico, as in relation to other powers, and to the same extent and with the same integrity of purpose. All this belongs to the constitutional power and duty of the government, and it will all be fulfilled. But the continuance of amity with Mexico cannot be purchased at any higher rate. If the peace of the two countries is to be disturbed, the responsibility will devolve on Mexico. She must be answerable for consequences. The United States, let it be again repeated, desire peace. It would be with infinite pain that they should find themselves in hostile relations with any of the new governments on this continent. But their government is regulated, limited, full of the spirit of liberty, but surrounded, nevertheless, with just restraints; and, greatly and fervently as it desires peace with all states, and especially with its more immediate neighbors, yet no fear of a different state of things can be allowed to interrupt its course of equal and exact justice to all nations, nor to jostle it out of the constitutional orbit in which it revolves.

I am, Sir, your obedient servant,

DANIEL WEBSTER.

WADDY THOMPSON, Esq., &c., &c., &c.

*M. de Bocanegra to Mr. Webster.*

[TRANSLATION.]

National Palace, Mexico, May 31, 1842.

The undersigned, Minister of Foreign Relations and Government of the Mexican republic, had the honor, a few days since, to address the honorable Secretary of State of the United States, in order to protest formally against the government of that republic, in the name of his Excellency the Provisional President, on account of the continual hostilities and aggressions of citizens of the United States against the Mexican ter-

ritory; and, although he might hope for a flattering result in the change of proceedings, he finds himself, in consequence of the continuation of those proceedings, under the necessity of again calling the attention of the Secretary of State to the undeniable toleration which has been and is still afforded to the enemies of a nation sincerely friendly, and bound by the solemn compacts of a treaty, which unites the two republics.

In that note the undersigned, after setting before the Secretary the prudence with which the government of Mexico has sought, ever since the commencement of the revolution in Texas, to conduct all its relations with the United States, so as to avoid a rupture between the two nations, which, from their importance and other serious considerations, seem destined to fix the policy and the lot of the vast and rich continent of America, he flattered himself with the idea that the Cabinet of Washington would not protect, either openly or secretly, or in any way, the scandalous usurpation of an acknowledged portion of the national territory. He, however, regrets that he must judge from facts, open to all the world, that the very cabinet of the United States, and the subaltern and local authorities, do observe a conduct openly at variance with the most sacred principles of the law of nations and the solemn compacts of amity existing between the two nations; sufficient proof being afforded by the consent given to the formation of the most tumultuous public assemblies, in various parts of the United States themselves, to the equipment of armaments, and the embarkation of volunteers in large bodies, and to the preparation and disposal of every thing calculated to contribute to aid the Texans, and to the invasion of a neighboring and friendly republic.

The Mexican government cannot understand such conduct; and, being itself frank in its proceedings, and animated at the same time by a sincere desire that the relations now existing between this republic and the United States should not suffer the slightest alteration, it considers itself bound in duty to repeat, with every formality, its former protest against such toleration; the continuance of which it will regard as a positive act of hostility against this republic, which will regulate the conduct to be observed by it agreeably to the dictates of justice and to the interests and dignity of the nation.

The undersigned hopes that the Secretary will be pleased to

reply with that promptness which the importance of the subject requires; and he avails himself, with pleasure, of this opportunity to repeat to that gentleman the assurance of his most distinguished consideration, with which he remains, &c.

J. M. DE BOCANEGRA.

HON. DANIEL WEBSTER, *Secretary of State of the United States of America.*

*Mr. Webster to Mr. Thompson.*

Department of State, Washington, July 13, 1842.

SIR,— After writing to you on the 8th instant, I received, through the same channel as the former, M. de Bocanegra's second letter, and at the same time your despatch of the 6th of June, and your private letter of the 21st. This last letter of M. de Bocanegra was written, as you will see, before it was possible for him to expect an answer to his first, which answer is now forwarded, and shows the groundless nature of the complaints of Mexico. The letter itself is highly exceptionable and offensive. It imputes violations of honor and good faith to the government of the United States, not only in the most unjust, but in the most indecorous manner. You have not spoken of it in terms too strong, in your circular to the members of the diplomatic corps.

On the receipt of this note, you will write a note to M. de Bocanegra, in which you will say, that the Secretary of State of the United States, on the 9th of July, received his letter of the 31st of May; that the President of the United States considers the language and tone of that letter derogatory to the character of the United States, and highly offensive, as it imputes to their government a direct breach of faith; and that he directs that no other answer be given to it, than the declaration, that the conduct of the government of the United States, in regard to the war between Mexico and Texas, having been always hitherto governed by a strict and impartial regard to its neutral obligations, will not be changed or altered in any respect or in any degree. If for this the government of Mexico shall see fit to change the relations at present existing between the two countries, the responsibility remains with herself.

I am, Sir, your obedient servant,

DANIEL WEBSTER.

WADDY THOMPSON, ESQ., &c., &c., &c.

## CAPTURE OF MONTEREY.

*Mr. Webster to Mr. Thompson.*

Department of State, Washington, January 17, 1843.

SIR, — Your despatches to No. —, inclusive, and your private letter of the 15th ultimo, have been received.

Although the department is without official intelligence of the seizure of Monterey by Commodore Jones, in command of the United States squadron in the Pacific, it is deemed proper that no time should be lost in acquainting the Mexican government that the transaction was entirely unauthorized. If, therefore, the account of that event should prove to be authentic, you will take occasion to inform the Minister for Foreign Affairs, orally, that Commodore Jones had no warrant from this government for the proceeding, and that the President exceedingly regrets its occurrence. I am, Sir, your obedient servant

DANIEL WEBSTER.

WADDY THOMPSON, ESQ., &amp;c., &amp;c., &amp;c.

*Mr. Webster to General Almonte.*

Department of State, Washington, January 21, 1843.

The undersigned, Secretary of State of the United States, has the honor to communicate to General Almonte, Envoy Extraordinary and Minister Plenipotentiary of the Mexican republic, a copy of an instruction which has been addressed by this department to the minister of the United States at Mexico, upon the subject of the reported seizure of Monterey, on the Mexican coast, by Commodore Jones, in command of the United States squadron in the Pacific.

The undersigned avails himself of the occasion to offer General Almonte renewed assurances of his very distinguished consideration.

DANIEL WEBSTER.

GENERAL DON J. N. ALMONTE, &amp;c.

To this note an answer was returned by General Almonte on the 24th of January, expressing his regret that nothing was said by Mr. Webster about punishing Commodore Jones, and intimating that compensation ought to be made by the United States for the losses suffered by citizens of Mexico in consequence of the capture of Monterey. To this letter of General Almonte the following reply was returned by Mr. Webster.

*Mr. Webster to General Almonte.*

Department of State, Washington, January 30, 1843.

The undersigned, Secretary of State of the United States, has had the honor to receive the note of the 24th instant of General Almonte, Envoy Extraordinary and Minister Plenipotentiary of the Mexican republic.

General Almonte has already been made acquainted with the instruction addressed from this department, on the 17th instant, to the minister of the United States at Mexico, respecting the transaction at Monterey, in Upper California, in which Commodore Jones was concerned; but General Almonte now expresses his regret that he sees in that instruction no declaration that Commodore Jones will be exemplarily punished for the extraordinary act of excess committed by him, in violation of the faith of treaties, and in abuse of the hospitality with which the peaceable inhabitants of Monterey were prepared to receive him.

The undersigned has the honor to inform General Almonte, that, before the receipt of his note, the President had given directions for the adoption of such a course of proceeding toward Commodore Jones as, in his opinion, was due to the circumstances of the case, to the preservation of the principle and practice of absolute and entire abstinence, on the part of military power, from all aggression in time of peace, and especially due to the friendly relations at the present time happily subsisting between the United States and Mexico.

But General Almonte and his government must see that Commodore Jones intended no indignity to the government of Mexico, nor any thing unlawful toward her citizens. Unfortunately, he supposed, as he asserts, that a state of war actually existed, at the time, between the two countries. If this supposition had been well founded, all that he did would have been justifiable; so that, whatever of imprudence or impropriety he may be chargeable with, there is nothing to show that he intended any affront to the honor of the Mexican government, or to violate the relations of peace.

General Almonte is aware of some of the circumstances in which this belief of the actual existence of a state of hostilities probably might have had its origin. It is not deemed necessary now to advert to those circumstances, nor is it at present known

to the government of the United States what other causes may have existed to strengthen this belief, or to make it general along the western shore of this continent. In the clearly manifest absence of all illegal and improper intent, some allowance may be properly extended toward acts of indiscretion in a quarter so very remote, and in which correct information of distant events is not soon or easily obtained.

If, in this transaction, citizens of Mexico have received any injury in their persons or property, the government of the United States will undoubtedly feel itself bound to make ample reparation; and the representations of General Almonte on that subject will receive the most respectful and immediate consideration. Happily, no lives were lost; nor is it understood that any considerable injury was suffered by any one.

The undersigned is directed by the President to assure General Almonte and his government, that the government of the United States will at all times be among the last to authorize or justify any aggression on the territory of a nation with whom it is at peace, or any indignity to its government. Sensibly alive to any indignity, if offered to itself, it is equally resolved to give no such cause of offence to its neighbors. And the undersigned is directed to assure General Almonte and his government of the pain and the surprise which the President experienced on receiving information of this transaction. Under these assurances, the President hopes that it may pass away without leaving in the mind of the government of Mexico any other feeling than that in which the government of the United States entirely partakes; a feeling of deep regret at what has happened, and a conviction that no such unfortunate and unauthorized occurrence ought in any degree to impair the amicable relations subsisting between the two countries, so evidently to the advantage of both.

The undersigned has been made acquainted with the communication addressed by the Mexican Secretary of State to the minister of the United States at Mexico, and with the answer of the latter gentleman to that communication.

The undersigned avails himself of this occasion to offer General Almonte renewed assurances of his most distinguished consideration.

DANIEL WEBSTER.

GENERAL DON J. N. ALMONTE, &c.

# China and the Sandwich Islands

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*Message from the President of the United States, on the Subject of the Trade and Commerce of the United States with the Sandwich Islands, and of Diplomatic Intercourse with their Government; also, in Relation to the new Position of Affairs in China, growing out of the late War between Great Britain and China, and recommending Provision for a Diplomatic Agent, December 31, 1842.\**

TO THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES:

I communicate herewith to Congress copies of a correspondence which has recently taken place between certain agents of the government of the Hawaiian or Sandwich Islands, and the Secretary of State.

The condition of those islands has excited a good deal of interest, which is increasing by every successive proof that their inhabitants are making progress in civilization, and becoming more and more competent to maintain regular and orderly civil government. They lie in the Pacific Ocean, much nearer to this continent than the other, and have become an important place for the refitment and provisioning of American and European vessels.

Owing to their locality, and to the course of the winds which prevail in this quarter of the world, the Sandwich Islands are the stopping-place for almost all vessels passing from continent to continent across the Pacific Ocean. They are especially resorted to by the great numbers of vessels of the United States which are engaged in the whale-fishery in those seas. The number of vessels of all sorts, and the amount of property owned by citizens of the United States, which are found in those isl-

\* This Message was written by Mr. Webster.



ands in the course of a year, are stated, probably with sufficient accuracy, in the letter of the agents.

Just emerging from a state of barbarism, the government of the islands is as yet feeble; but its dispositions appear to be just and pacific, and it seems anxious to improve the condition of its people by the introduction of knowledge, of religious and moral institutions, means of education, and the arts of civilized life.

It cannot but be in conformity with the interest and the wishes of the government and the people of the United States, that this community, thus existing in the midst of a vast expanse of ocean, should be respected, and all its rights strictly and conscientiously regarded. And this must also be the true interest of all other commercial states. Far remote from the dominions of European powers, its growth and prosperity as an independent state may yet be in a high degree useful to all whose trade is extended to those regions, while its nearer approach to this continent, and the intercourse which American vessels have with it, such vessels constituting five sixths of all which annually visit it, could not but create dissatisfaction on the part of the United States at any attempt by another power, should such attempt be threatened or feared, to take possession of the islands, colonize them, and subvert the native government. Considering, therefore, that the United States possess so very large a share of the intercourse with those islands, it is deemed not unfit to make the declaration, that their government seeks nevertheless no peculiar advantages, no exclusive control over the Hawaiian government, but is content with its independent existence, and anxiously wishes for its security and prosperity. Its forbearance in this respect, under the circumstances of the very large intercourse of their citizens with the islands, would justify this government, should events hereafter arise to require it, in making a decided remonstrance against the adoption of an opposite policy by any other power. Under the circumstances, I recommend to Congress to provide for a moderate allowance to be made out of the treasury to the consul residing there, that, in a government so new and a country so remote, American citizens may have respectable authority to which to apply for redress in case of injury to their persons and property, and to whom the government of the

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country may also make known any acts committed by American citizens, of which it may think it has a right to complain.

Events of considerable importance have recently transpired in China. The military operations carried on against that empire by the English government have been terminated by a treaty, according to the terms of which four important ports, hitherto shut against foreign commerce, are to be open to British merchants, namely, Amoy, Fu-Chow, Ning-po, and Shanghai. It cannot but be important to the mercantile interest of the United States, whose intercourse with China at the single port of Canton has already become so considerable, to ascertain whether these other ports, now open to British commerce, are to remain shut, nevertheless, against the commerce of the United States. The treaty between the Chinese government and the British commissioner provides neither for the admission nor the exclusion of the ships of other nations. It would seem, therefore, that it remains with every other nation, having commercial intercourse with China, to seek to make proper arrangements for itself with the government of that empire in this respect.

The importations into the United States from China are known to be large, having amounted in some years to nine millions of dollars. The exports, too, from the United States to China constitute an interesting and growing part of the commerce of the country. It appears that in the year 1841, in the direct trade between the two countries, the value of the exports from the United States amounted to seven hundred and fifteen thousand dollars in domestic produce, and four hundred and eighty-five thousand dollars in foreign merchandise. But the whole amount of American produce which finally reaches China, and is there consumed, is not comprised in these sums, which include only the direct trade. Many vessels with American products on board sail with a primary destination to other countries, but ultimately dispose of more or less of their cargoes in the port of Canton.

The peculiarities of the Chinese government and the Chinese character are well known. An empire supposed to contain three hundred millions of subjects, fertile in various rich products of the earth, not without the knowledge of letters and of many arts, and with large and expensive accommodations for internal intercourse and traffic, has for ages sought to exclude

the visits of strangers and foreigners from its dominions, and has assumed for itself a superiority over all other nations. Events appear likely to break down and soften this spirit of non-intercourse, and to bring China, ere long, into the relations which usually subsist between civilized states. She has agreed in the treaty with England that correspondence between the agents of the two governments shall be on equal terms; a concession which it is hardly probable will hereafter be withheld from other nations.

It is true, that the cheapness of labor among the Chinese, their ingenuity in its application, and the fixed character of their habits and pursuits, may discourage the hope of the opening of any great and sudden demand for the fabrics of other countries; but experience proves that the productions of Western nations find a market, to some extent, among the Chinese; that that market, so far as respects the productions of the United States, although it has considerably varied in successive seasons, has, on the whole, more than doubled within the last ten years; and it can hardly be doubted that the opening of several new and important ports, connected with parts of the empire heretofore seldom visited by Europeans or Americans, would exercise a favorable influence upon the demand for such productions.

It is not understood that the immediate establishment of correspondent embassies and missions, or the permanent residence of diplomatic functionaries, with full powers, of each country, at the court of the other, is contemplated between England and China; although, as has been already observed, it has been stipulated that intercourse between the two countries shall hereafter be on equal terms. An ambassador, or envoy extraordinary and minister plenipotentiary, can only be accredited, according to the usages of Western nations, to the head or sovereign of the state; and it may be doubtful whether the court of Peking is yet prepared to conform to these usages, so far as to receive a minister plenipotentiary to reside near it.

Being of opinion, however, that the commercial interests of the United States connected with China require, at the present moment, a degree of attention and vigilance such as there is no agent of this government on the spot to bestow, I recommend to Congress to make appropriation for the compensation

of a commissioner to reside in China, to exercise a watchful care over the concerns of American citizens, and for the protection of their persons and property; empowered to hold intercourse with the local authorities, and ready, under instructions from his government, should such instructions become necessary and proper hereafter, to address himself to the high functionaries of the empire, or, through them, to the Emperor himself.

It will not escape the observation of Congress, that, in order to secure the important objects of any such measure, a citizen of much intelligence and weight of character should be employed on such agency; and that, to secure the services of such an individual, a compensation should be made corresponding with the magnitude and importance of the mission.

JOHN TYLER.

Washington, December 30, 1842.

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## INTERCOURSE WITH CHINA.

*Mr. Webster to Mr. Cushing.*

Department of State, Washington, May 8, 1843

SIR,— You have been appointed by the President Commissioner to China, and Envoy Extraordinary and Minister Plenipotentiary of the United States to the court of that empire. The ordinary general or circular letter of instructions will be placed in your hands, and another letter stating the composition or organization of the mission, your own allowances, the allowance of the secretary, and other matters connected with the expenditures about to be incurred under the authority of Congress.

It now remains for this department to say something of the political objects of the mission, and the manner in which it is hoped these objects may be accomplished. It is less necessary than it might otherwise be to enter into a detailed statement of the considerations which have led to the institution of the mission, not only as you will be furnished with a copy of the President's communication to Congress recommending provision to be made for the measure, but also as your connection with Congress has necessarily brought these considerations to your notice and contemplation.

Occurrences happening in China within the last two years have resulted in events which are likely to be of much importance as well to the United States as to the rest of the civilized world. Of their still more important consequences to China herself it is not necessary here to speak. The hostilities which have been carried on between that empire and England have resulted, among other consequences, in opening four important ports to English commerce; namely, Amoy, Ning-po, Shanghai, and Fu-chow.

These ports belong to some of the richest, most productive, and most populous provinces of the empire, and are likely to become very important marts of commerce. A leading object of the mission in which you are now to be engaged is, to secure the entry of American ships and cargoes into these ports on terms as favorable as those which are enjoyed by English merchants. It is not necessary to dwell here on the great and well-known amount of imports of the productions of China into the United States. These imports, especially in the great article of tea, are not likely to be diminished. Heretofore they have been paid for in the precious metals, or, more recently, by bills drawn on London. At one time, indeed, American paper of certain descriptions was found to be an available remittance. Latterly, a considerable trade has sprung up in the export of certain American manufactures to China. To augment these exports, by obtaining the most favorable commercial facilities, and cultivating, to the greatest extent practicable, friendly commercial intercourse with China in all its accessible ports, is matter of moment to the commercial and manufacturing, as well as the agricultural and mining interests of the United States. It cannot be foreseen how rapidly or how slowly a people of such peculiar habits as the Chinese, and apparently so tenaciously attached to those habits, may adopt the sentiments, ideas, and customs of other nations. But if prejudiced, and strongly wedded to their own usages, the Chinese are still understood to be ingenious, acute, and inquisitive. Experience thus far, if it does not strongly animate and encourage efforts to introduce some of the arts and the products of other countries into China, is not, nevertheless, of a character such as should entirely repress those efforts. You will be furnished with accounts, as accurate as can be obtained, of the history

and present state of the export trade of the United States to China.

As your mission has in view only friendly and commercial objects, (objects, it is supposed, equally useful to both countries,) the natural jealousy of the Chinese, and their repulsive feeling toward foreigners, it is hoped, may be in some degree removed or mitigated by prudence and address on your part. Your constant aim must be, to produce a full conviction on the minds of the government and the people that your mission is entirely pacific; that you come with no purposes of hostility or annoyance; that you are a messenger of peace, sent from the greatest power in America to the greatest empire in Asia, to offer respect and good-will, and to establish the means of friendly intercourse. It will be expedient, on all occasions, to cultivate the friendly dispositions of the government and people, by manifesting a proper respect for their institutions and manners, and avoiding, as far as possible, the giving of offence either to their pride or their prejudices. You will use the earliest and all succeeding occasions to signify that the government which sends you has no disposition to encourage, and will not encourage, any violation of the commercial regulations of China by citizens of the United States. You will state in the fullest manner the acknowledgment of this government, that the commercial regulations of the empire, having become fairly and fully known, ought to be respected by all ships and all persons visiting its ports; and if citizens of the United States, under these circumstances, are found violating well-known laws of trade, their government will not interfere to protect them from the consequences of their own illegal conduct. You will at the same time assert and maintain, on all occasions, the equality and independence of your own country. The Chinese are apt to speak of persons coming into the empire from other nations as tribute-bearers to the Emperor. This idea has been fostered, perhaps, by the costly parade of embassies from England. All ideas of this kind respecting your mission must, should they arise, be immediately met by a declaration, not made ostentatiously, or in a manner reproachful toward others, that you are no tribute-bearer; that your government pays tribute to none, and expects tribute from none; and that, even as to presents, your government neither makes nor accepts presents. You will

signify to all Chinese authorities, and others, that it is deemed to be quite below the dignity of the Emperor of China and the President of the United States of America to be concerning themselves with such unimportant matters as presents from one to the other; that the intercourse between the heads of two such governments should be made to embrace only great political questions, the tender of mutual regard, and the establishment of useful relations.

It is, of course, desirable that you should be able to reach Peking, and the court and person of the Emperor, if practicable. You will, accordingly, at all times signify this as being your purpose and the object of your mission; and perhaps it may be well to advance as near to the capital as shall be found practicable, without waiting to announce your arrival in the country. The purpose of seeing the Emperor in person must be persisted in as long as may be becoming and proper. You will inform the officers of the government, that you have a letter of friendship from the President of the United States to the Emperor, signed by the President's own hand, which you cannot deliver except to the Emperor himself, or some high officer of the court in his presence. You will say, also, that you have a commission conferring on you the highest rank among representatives of your government; and that this, also, can only be exhibited to the Emperor, or his chief officer. You may expect to encounter, of course, if you get to Peking, the old question of the *Ko-tou*. In regard to the mode of managing this matter, much must be left to your discretion, as circumstances may occur. All pains should be taken to avoid the giving of offence, or the wounding of the national pride; but, at the same time, you will be careful to do nothing which may seem, even to the Chinese themselves, to imply any inferiority on the part of your government, or any thing less than perfect independence of all nations. You will say that the government of the United States is always controlled by a sense of religion and of honor; that nations differ in their religious opinions and observances; that you cannot do any thing which the religion of your own country or its sentiments of honor forbid; that you have the most profound respect for his Majesty the Emperor; that you are ready to make to him all manifestations of homage which are consistent with your own sense of propriety, and that you are sure his

Majesty is too just to desire you to violate your duty; that you should deem yourself quite unworthy to appear before his Majesty, as peace-bearer from a great and powerful nation, if you should do any thing against religion or against honor, as understood by the government and people of the country you come from. Taking care thus in no way to allow the government or people of China to consider you as tribute-bearer from your government, or as acknowledging its inferiority, in any respect, to that of China, or any other nation, you will bear in mind, at the same time, what is due to your own personal dignity and the character which you bear. You will represent to the Chinese authorities, nevertheless, that you are directed to pay to his Majesty the Emperor the same marks of respect and homage as are paid by your government to his Majesty the Emperor of Russia, or any other of the great powers of the world.

A letter signed by the President, as above intimated, and addressed to the Emperor, will be placed in your hands. As has been already stated, you will say that this letter can only be delivered to the Emperor, or to some one of the great officers of state in his presence. Nevertheless, if this cannot be done, and the Emperor should still manifest a desire to receive the letter, you may consider the propriety of sending it to him, upon an assurance that a friendly answer to it shall be sent, signed by the hand of the Emperor himself.

It will be no part of your duty to enter into controversies which may exist between China and any European state; nor will you, in your communications, fail to abstain altogether from any sentiment or any expression which might give to other governments just cause of offence. It will be quite proper, however, that you should, in a proper manner, always keep before the eyes of the Chinese the high character, importance, and power of the United States. You may speak of the extent of their territory, their great commerce spread over all seas, their powerful navy everywhere giving protection to that commerce, and the numerous schools and institutions established in them to teach men knowledge and wisdom. It cannot be wrong for you to make known, where not known, that the United States, once a country subject to England, threw off that subjection years ago, asserted their independence, sword in hand, estab-



lished that independence after a seven years' war, and now meet England upon equal terms upon the ocean and upon the land. The remoteness of the United States from China, and still more, the fact that they have no colonial possessions in her neighborhood, will naturally lead to the indulgence of a less suspicious and more friendly feeling than may have been entertained toward England, even before the late war between England and China. It cannot be doubted that the immense power of England in India must be regarded by the Chinese government with dissatisfaction, if not with some degree of alarm. You will take care to show strongly how free the Chinese government may well be from all jealousy arising from such causes toward the United States. Finally, you will signify, in decided terms and a positive manner, that the government of the United States would find it impossible to remain on terms of friendship and regard with the Emperor, if greater privileges or commercial facilities should be allowed to the subjects of any other government than should be granted to citizens of the United States.

It is hoped and trusted that you will succeed in making a treaty such as has been concluded between England and China; and if one containing fuller and more regular stipulations could be entered into, it would be conducting Chinese intercourse one step farther toward the principles which regulate the public relations of the European and American states.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

CALEB CUSHING, Esq.

*Mr. Webster to Mr. Cushing.*

Department of State, Washington, May 8, 1843.

SIR, — The President having appointed you Commissioner to China in the place of Mr. Everett, who has declined to accept that appointment, this department is now to give you the necessary instructions for your mission.

You will receive herewith two commissions: one as Commissioner, under which you will be authorized to treat with the governors of provinces or cities, or other local authorities of China, and one as Envoy Extraordinary and Minister Plenipotentiary, to be presented at Peking, if you should reach the Emperor's court.

You will likewise be furnished with, —

1. A full power, authorizing you to sign any treaty which may be concluded between you and any person duly authorized for that purpose by the Emperor of China.

2. A letter of credence to the Emperor, with an office copy thereof; the original to be communicated or delivered to the sovereign in such manner as may be most convenient or agreeable to his Majesty to receive it.

3. A special passport for yourself and suite.

4. A letter of credit on Baring, Brothers, & Co., bankers of the United States at London, authorizing them to pay your drafts, from time to time, for an amount not exceeding twenty-five thousand dollars.

5. A printed list of the ministers and other diplomatic and consular agents of the United States abroad.

6. Laws of the United States, 9 vols., and pamphlet copies of the Acts of the Twenty-sixth and Twenty-seventh Congresses.

7. Congressional Debates (Gales and Seaton's), 8vo, 31 vols.

8. Gales and Seaton's American State Papers, folio, 21 vols.

9. Waite's State Papers, 12mo, 12 vols.

10. Diplomatic Correspondence (Sparks's), 12mo, 19 vols.

11. Diplomatic Code (Elliott's), 8vo, 2 vols.

12. American Almanac for 1843, 12mo, 1 vol.

13. Blue Book for 1841, 1 vol.

14. Commercial Regulations, 8vo, 3 vols.

15. American Archives (Force's), folio, 3 vols.

16. Secret Journals of Congress, 4 vols.

17. Journal of Federal Convention, 1 vol.

18. Sixth Census of the United States, 4 vols.

19. Congressional Documents of the Second Session of the Twenty-sixth Congress.

20. Congressional Documents of the First Session of the Twenty-seventh Congress.

21. Senate Documents of the Second Session of the Twenty-seventh Congress.

22. Printed Documents connected with the "Northeastern Boundary" Negotiation.

All the printed books are for the use of the mission; and, at the termination of your service, are to pass to your succe-

sor, or to be left with the archives in the hands of the *chargé d'affaires*, in case one should be named, or of such other person as may be designated by this department to take charge of them.

The act of Congress places at the disposition of the President the sum of forty thousand dollars, as an appropriation for the special expenses of this mission. But this does not include such payments out of the general fund for the contingent expenses of all the missions abroad as are usually made in the case of other missions. The President directs that you be allowed an outfit of nine thousand dollars, and a salary of nine thousand dollars. In missions to Europe, the government allows for the expenses of the minister's return a sum equal to one quarter's salary. Considering the distance from the United States at which diplomatic services are performed in Asia, it has been thought reasonable to allow in missions in that quarter of the world the minister's expenses in returning at the rate of half a year's salary. This has been done in previous cases. The return allowance is usually made out of the fund for the contingent expenses of the missions abroad; and, in case no sufficient surplus should remain of the fund specially appropriated by Congress after the necessary expenditures in China, you are authorized to draw on this department for your return allowance, as above stated. The secretary of the mission, Mr. Fletcher Webster, already appointed, will be allowed a salary at the rate of four thousand five hundred dollars a year. An advance has been made to him, partly toward his own compensation, and partly to enable him to make some necessary preparations for the objects of the mission, as you will see by his instructions, a copy of which you will herewith receive.

The necessary travelling expenses of yourself and suite from place to place while in China, when you cannot be conveniently conveyed by the squadron, will be allowed. Your salary will commence from the date of your commission, if you proceed on your mission within ninety days from that time. It is difficult to give you any rule respecting contingencies in a service so new, and in a country so remote. It may be necessary, or at least highly useful, that a draughtsman should accompany you, and also some young gentleman in the character of

physician. It is desired that you make such inquiries as may show whether the services of such persons can be obtained at small expense.

A number of young gentlemen have applied to be unpaid *attachés* to the mission. It will add to its dignity and importance, if your *suite* could be made respectable in number, by accepting such offers of attendance without expense to the government.

Of course, you will need the service of one or more interpreters. These you may engage either in Europe or in China, or wherever, in your own judgment, you can find persons most competent. The squadron destined for service in the Asiatic seas, and which, it is understood, will carry you out to China, will consist of the frigate *Brandywine*, the sloop of war *St. Louis*, and the steam-frigate *Missouri*. These vessels will be ready to proceed immediately from Norfolk, and will have instructions to take up the mission at Bombay.

The Secretary of the Navy will give the proper directions for the accommodation on board the vessels of such gentlemen attached to the mission as may be ready to go with the squadron.

The Navy Department will also cause proper instructions to be given to Commodore Parker, commanding the squadron, for carrying into effect the objects of government in this important mission.

In another paper of this date you will receive further instructions respecting the great political objects of the mission, and the means supposed to be most likely to accomplish them.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

CALEB CUSHING, Esq., appointed Commissioner of the United States to China.

### *The President's Letter to the Emperor.*

I, John Tyler, President of the United States of America, which States are Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Vermont, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Kentucky, Tennessee, Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Arkansas,

and Michigan, send you this letter of peace and friendship, signed by my own hand.

I hope your health is good. China is a great empire, extending over a great part of the world. The Chinese are numerous. You have millions and millions of subjects. The twenty-six United States are as large as China, though our people are not so numerous. The rising sun looks upon the great mountains and great rivers of China. When he sets, he looks upon rivers and mountains equally large in the United States. Our territories extend from one great ocean to the other; and on the west we are divided from your dominions only by the sea. Leaving the mouth of one of our great rivers, and going constantly toward the setting sun, we sail to Japan and to the Yellow Sea.

Now my words are, that the governments of two such great countries should be at peace. It is proper, and according to the will of Heaven, that they should respect each other, and act wisely. I therefore send to your court Caleb Cushing, one of the wise and learned men of this country. On his first arrival in China, he will inquire for your health. He has then strict orders to go to your great city of Peking, and there to deliver this letter. He will have with him secretaries and interpreters.

The Chinese love to trade with our people, and to sell them tea and silk, for which our people pay silver, and sometimes other articles. But if the Chinese and the Americans will trade, there should be rules, so that they shall not break your laws nor our laws. Our minister, Caleb Cushing, is authorized to make a treaty to regulate trade. Let it be just. Let there be no unfair advantage on either side. Let the people trade not only at Canton, but also at Amoy, Ning-po, Shang-hai, Fu-chow, and all such other places as may offer profitable exchanges both to China and the United States, provided they do not break your laws nor our laws. We shall not take the part of evil-doers. We shall not uphold them that break your laws. Therefore, we doubt not that you will be pleased that our messenger of peace, with this letter in his hand, shall come to Peking, and there deliver it; and that your great officers will, by your order, make a treaty with him to regulate affairs of trade, so that nothing may happen to disturb the peace between China and Amer-

*John Tyler*

From the Painting by G. P. A. Healy, owned by  
Hon. D. Gardiner Tyler, now in "Sherwood Forest,"  
President Tyler's residence from 1845 to 1862











A. W. H. in 1840 Boston



## Independence of the Sandwich Islands 151

ica. Let the treaty be signed by your own imperial hand. It shall be signed by mine, by the authority of our great council, the Senate.

And so may your health be good, and may peace reign.

Written at Washington, this twelfth day of July, in the year of our Lord one thousand eight hundred and forty-three.

Your good friend,

JOHN TYLER.\*

By the President:

A. P. UPSHUR, *Secretary of State*.

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### INDEPENDENCE OF THE SANDWICH ISLANDS.

On the 14th of December, 1842, a letter was addressed to Mr. Webster, by Messrs. Timoteo Haalilio and William Richards, Commissioners on behalf of the King of all the Hawaiian Islands, expressing the wish of their government that its independence should be recognized by the United States, and a convention entered into for the regulation of their mutual interests and concerns. To this letter the following answer was returned by Mr. Webster.

#### *The Secretary of State to the Agents of the Sandwich Islands.*

Department of State, Washington, December 19, 1842.

GENTLEMEN, — I have received the letter which you did me the honor to address to me, under date of the 14th instant, stating that you had been commissioned to represent, in the United States, the government of the Hawaiian Islands, inviting the attention of this government to the relations between the two countries, and intimating a desire for the recognition of the Hawaiian government by that of the United States.

Your communication has been laid before the President, and by him considered.

The advantages of your country to navigators in the Pacific, and in particular to the numerous vessels and vast tonnage of the United States frequenting that sea, are fully estimated; and just acknowledgments are due to the government and inhab-

\* This letter, dated July 12th, 1843, and countersigned by Mr. Upshur, was written by Mr. Webster before his retirement from the Department.

itants of the islands for their numerous acts of hospitality to the citizens of the United States.

The United States have regarded the existing authorities in the Sandwich Islands as a government suited to the condition of the people, and resting on their own choice; and the President is of opinion that the interests of all commercial nations require that that government should not be interfered with by foreign powers. Of the vessels which visit the islands, it is known that a great majority belong to the United States. The United States, therefore, are more interested in the fate of the islands and of their government than any other nation can be; and this consideration induces the President to be quite willing to declare, as the sense of the government of the United States, that the government of the Sandwich Islands ought to be respected; that no power ought either to take possession of the islands as a conquest, or for the purpose of colonization; and that no power ought to seek for any undue control over the existing government, or any exclusive privileges or preferences with it in matters of commerce.

Entertaining these sentiments, the President does not see any present necessity for the negotiation of a formal treaty, or the appointment or reception of diplomatic characters. A consul, or agent, from this government will continue to reside in the islands. He will receive particular instructions to pay just and careful attention to any claims or complaints which may be brought against the government or people of the islands by citizens of the United States, and he will also be instructed to receive any complaint which may be made by that government, for acts of individuals (citizens of the United States), on account of which the interference of this government may be requested, and to transmit such complaint to this department.

It is not improbable that this correspondence may be made the subject of a communication to Congress; and it will be officially made known to the governments of the principal commercial powers of Europe.

I have the honor to be, Gentlemen, your obedient servant,

DANIEL WEBSTER.

MESSRS. TIMOTEO HAALILIO AND WILLIAM RICHARDS, *Washington.*

## Boundaries of Texas

*Mr. Webster to his Excellency P. H. Bell, Governor of Texas.*

Department of State, Washington, August 5, 1850.

SIR, — A letter addressed by you to the late President of the United States, and dated on the 14th of June last, has, since his lamented decease, been transferred to the hands of his successor, by whom I am directed to address to you the following answer.

In that letter you say that, by the authority of the legislature of Texas, the executive of that State, in February last, despatched a special commissioner, with full power and instructions to extend the civil jurisdiction of that State over the unorganized counties of El Paso, Worth, Presidio, and Santa Fé, situated upon its northwestern limits; and that the commissioner has reported to you, in an official form, that the military officers employed in the service of the United States, stationed at Santa Fé, interposed adversely with the inhabitants to the fulfilment of his object, by employing their influence in favor of the establishment of a separate State government east of the Rio Grande, and within the rightful limits of the State of Texas. You also transmit a copy of the proclamation of Colonel John Monroe, acting under the orders of the government of the United States, under the designation of Civil and Military Governor of the Territory of New Mexico, and respectfully request the President to cause you to be informed whether or not this officer has acted in this matter under the orders of his government, and whether his proclamation meets with the approval of the President of the United States.

In the events which have occurred, the President hardly knows whether your Excellency would naturally expect an an-

swer to this letter from him. His predecessor in office, to whom it was addressed, and under whose authority and direction the proclamation of Colonel Monroe was issued, is no more; and at this time that proclamation, whatever may be regarded as its true character, has ceased to have influence or effect. The meeting of the people of New Mexico, by their representatives, which it invited, is understood to have taken place, although this government has as yet received no official information of it.

Partaking, however, in the fullest degree, of that high respect which the executive government of the United States always entertains towards the governors and governments of the States, the President thinks it his duty to manifest that feeling of respect by acknowledging and answering your letter. And this duty, let me assure your Excellency, has been so long delayed only by uncontrollable circumstances, and is now performed at the earliest practicable moment after the appointment of those heads of departments, and their acceptance of office, with whom it is usual, on important occasions, for the President of the United States to advise.

In answer, therefore, to your first interrogatory, namely, whether Colonel Monroe, in issuing the proclamation referred to, acted under the orders of this government, the President directs me to state, that Colonel Monroe's proclamation appears to have been issued in pursuance or in consequence of an order or letter of instructions given by the late Secretary of War, under the authority of the late President, to Lieutenant-Colonel McCall. Of this order, which bears date on the 19th of November, 1849, your Excellency was undoubtedly informed at the date of your letter. A full and accurate copy, however, is attached to this communication. Colonel McCall is therein instructed, that if the people of New Mexico, for whom Congress had provided no government, should manifest a wish to take any steps to establish a government for themselves, and apply for admission into the Union, it will be his duty, and the duty of others with whom he is associated, not to thwart, but to advance, their wishes. This order does not appear to authorize any exercise of military authority, or of any official or even personal interference to control or affect in any way the primary action of the people in the formation of a government, nor to permit any such interference by subordinate officers. Colonel

McCall and his associates were not called upon to take a lead in any measures, or even to recommend any thing as fit to be adopted by the people. Their whole duty was confined to what they might be able to perform, subordinate to the wishes of the people. In this matter it was evidently contemplated that they were to act as the agents of the inhabitants, and not as officers of this government.

It must be recollected that the only government then existing in the territory was a *quasi* military government; and as Congress had made no provision for the establishment of any form of civil government, and as the President doubtless believed that, under these circumstances, the people had a right to frame a government for themselves, and submit it to Congress for its approval, the order was a direction that the then existing military government should not stand in the way of the accomplishment of the wishes of the people, nor thwart those wishes, if the people entertained them, for the establishment of a free, popular, republican, civil government, for their own protection and benefit. This is evidently the whole purpose and object of the order. The military officer in command and his associates were American citizens, acquainted with the forms of civil and popular proceedings, and it was expected that they would aid the inhabitants of the territory, by their advice and assistance, in their proceedings for establishing a government of their own. There is no reason to suppose that Colonel Monroe, an officer as much distinguished for prudence and discretion as for gallant conduct in arms, meant to act, or did act, otherwise than in entire subordination and subserviency to the will of the people among whom he was placed. He was not authorized to do so, nor does the President understand him as intending to do any thing whatever in his military character, nor to represent in any way the wishes of the executive government of the United States.

To judge intelligently and fairly of these transactions, we must recall to our recollection the circumstances of the case as they then existed.

Previously to the war with Mexico, which commenced in May, 1846, and received the sanction of Congress on the 13th of that month, the territory of New Mexico formed a department or state of the Mexican republic, and was governed by her laws.



General Kearney, acting under orders from this government, invaded this department with an armed force; the Governor fled at his approach, the troops under his command dispersed, and General Kearney entered Santa Fé, the capital, on the 18th of August, 1846, and took possession of the territory in the name of the United States.

On the 22d of that month he issued a proclamation to the inhabitants, stating the fact that he had taken possession of Santa Fé, at the head of his troops, and announcing his intention to hold the department, with its original boundaries (on both sides of the Del Norte) and under the name of New Mexico. By that proclamation he promised to protect the inhabitants of New Mexico in their persons and property, against their Indian enemies and *all others*; and assured them that the United States intended to provide for them a free government, when the people would be called upon to exercise the rights of freemen in electing their own representatives to the territorial legislature. On the same day he established a territorial constitution by an organic law, which provided for executive, legislative, and judicial departments of the government, defined the right of suffrage, and provided for trial by jury; and at the same time established a code of laws. This constitution declared that "the country heretofore known as New Mexico shall be known hereafter and designated as the Territory of New Mexico, in the United States of America"; and the members of the lower house of the legislature were apportioned among the counties established by the decree of the department of New Mexico, of June 17, 1844, which counties, it is understood, included all the territory over which Texas has lately attempted to establish her own jurisdiction.

On the 23d of December, 1846, a copy of this constitution and code was transmitted by President Polk to the House of Representatives, in pursuance of a call on him by that body. In the message transmitting the constitution, he says that "portions of it purport to establish and organize a *permanent* territorial government over the territory, and to impart to its inhabitants political rights which, under the Constitution of the United States, can be enjoyed permanently only by citizens of the United States. These have not been approved and recognized by me. Such organized regulations as have been estab-

lished in any of the conquered territories for the security of our conquest, for the preservation of order, for the protection of the rights of the inhabitants, and for depriving the enemy of the advantages of these territories while the military possession of them by the forces of the United States continue, *will be recognized and approved.*"

Nearly four years have now elapsed since the *quasi* military government was established by military authority, and received, with the exceptions mentioned, the approval of President Polk. In the mean time a treaty of peace has been concluded with Mexico, by which a boundary line was established that left this territory within the United States, thereby confirming to the United States, by treaty, what they had before acquired by conquest. The treaty, in perfect accordance with the proclamation of General Kearney, declared that the Mexicans remaining in this territory should be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to an enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; "and, in the mean time, should be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

Thus it will be perceived that the authority of the United States over New Mexico was the result of conquest; and the possession held of it, in the first place, was of course a military possession. The treaty added the title by cession to the already existing title by successful achievements in arms. With the peace, there arose a natural expectation, that, as early as possible, there would come a civil government to supersede the military. But until some such form of government should come into existence, it was matter of absolute necessity that the military government should continue, as otherwise the country must fall into absolute anarchy. And this has been the course generally, in the practice of civilized nations, when colonies or territories have been acquired by war, and their acquisition confirmed by treaty.

The military government, therefore, existing in New Mexico at the date of the order, existed there of inevitable necessity. It existed as much against the will of the executive government

of the United States, as against the will of the people. The late President had adopted the opinion, that it was justifiable in the people of the territory, under the circumstances, to form a constitution of government, without any previous authority conferred by Congress, and thereupon to apply for admission into the Union. It was under this state of things, and under the influence of these opinions, that the order of the 19th of November last was given, and executed in the manner we have seen. The order indicates no boundary, and defines no territory, except by the name of New Mexico; and so far as that indicated any thing, it referred to a known territory, which had been organized under military authority, approved by the executive, and left without remonstrance or alteration by Congress for more than three years. It appears to the President, that such an order could not have been intended to invade the rights of Texas.

Secondly, you ask whether the proclamation of Colonel Monroe meets with the approval of the President of the United States.

To determine this question, it is necessary to look at the *object* of the proclamation, and the *effect* of the proceedings had under it. If the object was to assume the authority to settle the disputed boundary with Texas, then the President has no hesitation in saying such object does not meet his approbation, because he does not believe that the executive branch of this government, or the inhabitants of New Mexico, or both combined, have any constitutional authority to settle that question. That belongs either to the judicial department of the federal government, or to the concurrent action by agreement of the legislative departments of the governments of the United States and Texas. But it has been sufficiently shown that Colonel Monroe could have had no such object, and that his intention was merely to act in aid of the people in forming a State constitution to be submitted to Congress. Assuming, then, that such a constitution has been formed, what is its *effect* upon the disputed boundary? If it compromises the right of either party to that question, then it does not meet the President's approbation, for he deems it his duty to leave the settlement of that question to the tribunal to which it constitutionally belongs. It is sufficient for him, that this boundary is in dispute; that the territory east of the Rio del Norte seems to

be claimed in good faith both by Texas and New Mexico, or rather by the United States. Whatever might be his judgment in regard to their respective rights, he has no power to decide upon them, or even to negotiate in regard to them; and therefore it would be improper for him to express any opinion.

The subject-matter of dispute is between the United States and Texas, and not between New Mexico and Texas. If those people should voluntarily consent to come under the jurisdiction of Texas, such consent would not bind the United States to take away their title to the territory. So, on the other hand, if they should voluntarily claim the title for the United States, it would not deprive Texas of her rights, whatever those rights might be. They can only be affected by her own acts, or a judicial decision. The State constitution formed by New Mexico can have no legal validity until it is recognized and adopted by the law-making power of the United States. Until that is done, it has no sanction, and can have no effect upon the right of Texas, or of the United States, to the territory in dispute. And it is not to be presumed that Congress will ever give its sanction to that constitution, without first providing for the settlement of this boundary. Indeed no government, either Territorial or State, can be formed for New Mexico, without providing for the settling of this boundary. Hence, the President regards the formation of this State constitution as a mere nullity. It may be regarded, indeed, as a petition to Congress to be admitted as a State; but until Congress shall grant the prayer of such petition, by legal enactments, it affects the rights of neither party. But as it is the right of all to petition Congress for any law which it may constitutionally pass, this people were in the exercise of a common right when they formed their constitution, with a view of applying to Congress for admission as a State; and as he thinks the act can prejudice no one, he feels bound to approve of the conduct of Colonel Monroe in issuing the proclamation.

I am directed also to state, that, in the President's opinion, it would not be just to suppose that the late President desired to manifest any unfriendly attitude or aspect towards Texas or the claims of Texas. The boundary between Texas and New Mexico was known to be disputed; and it was equally well known, that the executive government of the United States had

no power to settle that dispute. It is believed that the executive power has not wished, it certainly does not now wish, to interfere with that question, in any manner whatever, as a question of title.

In one of his last communications to Congress, that of the 16th of June last, the late President repeated the declaration, that he had no power to decide the question of boundary, and no desire to interfere with it; and that the authority to settle that question resided elsewhere. The object of the executive government has been, as I believe, and as I am authorized to say it certainly now is, to secure the peace of the country; to maintain as far as practicable the state of things that existed at the date of the treaty; and to uphold and preserve the rights of the respective parties as they were under the solemn guaranty of the treaty, until the highly interesting question of boundary should be finally settled by competent authority. This treaty, which is now a supreme law of the land, declares, as before stated, that the inhabitants shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion. It will, of course, be the President's duty to see that this law is sustained, and the protection which it guaranties made effectual, and this is the plain and open path of executive duty in which he proposes to tread.

Other transactions of a very grave character are alluded to, and recited in your Excellency's letter. To these transactions I am now directed not more particularly to advert in replying to the questions propounded by you respecting the authority under which Colonel Monroe acted, and the approval or disapproval of his proclamation. Your Excellency's communication and answer will be immediately laid before Congress, and the President will take that occasion to bring to its notice the transactions alluded to above.

It is known to your Excellency, that the questions growing out of the acquisition of California and New Mexico, and among them the highly important one of the boundary of Texas, have steadily engaged the attention of both houses of Congress for many months, and still engage it, with intense interest. It is understood that the legislature of Texas will be shortly in session, and will have the boundary question also

before it. It is a delicate crisis in our public affairs, and not free certainly from possible dangers ; but let us confidently trust that justice, moderation, patriotism, and the love of the Union, may inspire such counsels, both in the government of the United States and that of Texas, as shall carry the country through these dangers, and bring it safely out of them all, and with renewed assurances of the continuance of mutual respect and harmony in the great family of States.

I have the honor to be, with entire regard, your Excellency's most obedient servant.

DANIEL WEBSTER. *Secretary of State.*

# Correspondence with the Chevalier Hülsemann

*Chevalier J. G. Hülsemann to the Secretary of State.*

[TRANSLATION.]

Austrian Legation, Washington, September 30, 1850.

The undersigned, Chargé d'Affaires of his Majesty the Emperor of Austria, has been instructed to make the following communication to the Secretary of State.

As soon as the Imperial government became aware of the fact that a United States agent had been despatched to Vienna, with orders to watch for a favorable moment to recognize the Hungarian republic, and to conclude a treaty of commerce with the same, the undersigned was directed to address some confidential but pressing representations to the Cabinet of Washington against that proceeding, which is so much at variance with those principles of international law, so scrupulously adhered to by Austria, at all times and under all circumstances, towards the United States. In fact, how is it possible to reconcile such a mission with the principle of non-intervention, so formally announced by the United States as the basis of American policy, and which had just been sanctioned with so much solemnity by the President, in his inaugural address of March 5, 1849? Was it in return for the friendship and confidence which Austria had never ceased to manifest towards them, that the United States became so impatient for the downfall of the Austrian monarchy, and even sought to accelerate that event by the utterance of their wishes to that effect? Those who did not hesitate to assume the responsibility of sending Mr. Dudley Mann on such an errand, should, independent of considerations of propriety, have borne in mind that they were exposing their emissary to be treated as a spy. It is to be regretted that the American

government was not better informed as to the actual resources of Austria, and her historical perseverance in defending her just rights. A knowledge of those resources would have led to the conclusion that a contest of a few months' duration could neither have exhausted the energies of that power, nor turned aside its purpose to put down the insurrection. Austria has struggled against the French Revolution for twenty-five years; the courage and perseverance which she exhibited in that memorable contest have been appreciated by the whole world.

To the urgent representations of the undersigned, Mr. Clayton answered that Mr. Mann's mission had no other object in view than to obtain reliable information as to the true state of affairs in Hungary, by personal observation. This explanation can hardly be admitted, for it says very little as to the cause of the anxiety which was felt to ascertain the chances of the revolutionists. Unfortunately, the language in which Mr. Mann's instructions were drawn gives us a very correct idea of their scope. This language was offensive to the Imperial Cabinet, for it designates the Austrian government as an *iron rule*, and represents the rebel chief, Kossuth, as an illustrious man; while improper expressions are introduced in regard to Russia, the intimate and faithful ally of Austria. Notwithstanding these hostile demonstrations, the Imperial Cabinet has deemed it proper to preserve a conciliatory deportment, making ample allowance for the ignorance of the Cabinet of Washington on the subject of Hungarian affairs, and its disposition to give credence to the mendacious rumors which are propagated by the American press. This extremely painful incident, therefore, might have been passed over without any written evidence being left, on our part, in the archives of the United States, had not General Taylor thought proper to revive the whole subject by communicating to the Senate, in his message of the 18th of last March, the instructions with which Mr. Mann had been furnished on the occasion of his mission to Vienna. The publicity which has been given to that document has placed the Imperial government under the necessity of entering a formal protest, through its official representative, against the proceedings of the American government, lest that government should construe our silence into approbation, or toleration even, of the principles which appear to have guided its action and the means it has adopted.



In view of all these circumstances, the undersigned has been instructed to declare that the Imperial government totally disapproves, and will always continue to disapprove, of those proceedings, so offensive to the laws of propriety; and that it protests against all interference in the internal affairs of its government. Having thus fulfilled his duty, the undersigned considers it a fortunate circumstance that he has it in his power to assure the Secretary of State that the Imperial government is disposed to cultivate relations of friendship and good understanding with the United States, relations which may have been momentarily weakened, but which could not again be seriously disturbed without placing the cardinal interests of the two countries in jeopardy.

The instructions for addressing this communication to Mr. Clayton reached Washington at the time of General Taylor's death. In compliance with the requisitions of propriety, the undersigned deemed it his duty to defer the task until the new administration had been completely organized; a delay which he now rejoices at, as it has given him the opportunity of ascertaining from the new President himself, on the occasion of the reception of the diplomatic corps, that the fundamental policy of the United States, so frequently proclaimed, would guide the relations of the American government with the other powers. Even if the government of the United States were to think it proper to take an indirect part in the political movements of Europe, American policy would be exposed to acts of retaliation, and to certain inconveniences, which could not fail to affect the commerce and the industry of the two hemispheres. All countries are obliged, at some period or other, to struggle against internal difficulties; all forms of government are exposed to such disagreeable episodes; the United States have had some experience in this very recently. Civil war is a possible occurrence everywhere, and the encouragement which is given to the spirit of insurrection and of disorder most frequently falls back upon those who seek to aid it in its developments, in spite of justice and wise policy.

The undersigned avails himself of this occasion to renew to the Secretary of State the assurance of his distinguished consideration.

HULSEMANN.

TO THE HON. DANIEL WEBSTER, *Secretary of State of the United States.*

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## *The Secretary of State to Mr. Hülsemann.*

Department of State, Washington, December 21, 1850

The undersigned, Secretary of State of the United States, had the honor to receive, some time ago, the note of Mr. Hülsemann, Chargé d'Affaires of his Majesty, the Emperor of Austria, of the 30th of September. Causes, not arising from any want of personal regard for Mr. Hülsemann, or of proper respect for his government, have delayed an answer until the present moment. Having submitted Mr. Hülsemann's letter to the President, the undersigned is now directed by him to return the following reply.

The objects of Mr. Hülsemann's note are, first, to protest, by order of his government, against the steps taken by the late President of the United States to ascertain the progress and probable result of the revolutionary movements in Hungary; and, secondly, to complain of some expressions in the instructions of the late Secretary of State to Mr. A. Dudley Mann, a confidential agent of the United States, as communicated by President Taylor to the Senate on the 28th of March last.

The principal ground of protest is founded on the idea, or in the allegation, that the government of the United States, by the mission of Mr. Mann and his instructions, has interfered in the domestic affairs of Austria in a manner unjust or disrespectful toward that power. The President's message was a communication made by him to the Senate, transmitting a correspondence between the executive government and a confidential agent of its own. This would seem to be itself a domestic transaction, a mere instance of intercourse between the President and the Senate, in the manner which is usual and indispensable in communications between the different branches of the government. It was not addressed either to Austria or Hungary; nor was it a public manifesto, to which any foreign state was called on to reply. It was an account of its transactions communicated by the executive government to the Senate, at the request of that body; made public, indeed, but made public only because such is the common and usual course of proceeding. It may be regarded as somewhat strange, therefore, that the Austrian Cabinet did not perceive that, by the instructions given to Mr. Hülsemann, it was itself interfering with

the domestic concerns of a foreign state, the very thing which is the ground of its complaint against the United States.

This department has, on former occasions, informed the ministers of foreign powers, that a communication from the President to either house of Congress is regarded as a domestic communication, of which, ordinarily, no foreign state has cognizance; and in more recent instances, the great inconvenience of making such communications the subject of diplomatic correspondence and discussion has been fully shown. If it had been the pleasure of his Majesty, the Emperor of Austria, during the struggles in Hungary, to have admonished the provisional government or the people of that country against involving themselves in disaster, by following the evil and dangerous example of the United States of America in making efforts for the establishment of independent governments, such an admonition from that sovereign to his Hungarian subjects would not have originated here a diplomatic correspondence. The President might, perhaps, on this ground, have declined to direct any particular reply to Mr. Hülsemann's note; but, out of proper respect for the Austrian government, it has been thought better to answer that note at length; and the more especially, as the occasion is not unfavorable for the expression of the general sentiments of the government of the United States upon the topics which that note discusses.

A leading subject in Mr. Hülsemann's note is that of the correspondence between Mr. Hülsemann and the predecessor of the undersigned, in which Mr. Clayton, by direction of the President, informed Mr. Hülsemann "that Mr. Mann's mission had no other object in view than to obtain reliable information as to the true state of affairs in Hungary, by personal observation." Mr. Hülsemann remarks, that "this explanation can hardly be admitted, for it says very little as to the cause of the anxiety which was felt to ascertain the chances of the revolutionists." As this, however, is the only purpose which can, with any appearance of truth, be attributed to the agency; as nothing whatever is alleged by Mr. Hülsemann to have been either done or said by the agent inconsistent with such an object, the undersigned conceives that Mr. Clayton's explanation ought to be deemed, not only admissible, but quite satisfactory.

Mr. Hülsemann states, in the course of his note, that his in-

structions to address his present communication to Mr. Clayton reached Washington about the time of the lamented death of the late President, and that he delayed from a sense of propriety the execution of his task until the new administration should be fully organized; "a delay which he now rejoices at, as it has given him the opportunity of ascertaining from the new President himself, on the occasion of the reception of the diplomatic corps, that the fundamental policy of the United States, so frequently proclaimed, would guide the relations of the American government with other powers." Mr. Hülsemann also observes, that it is in his power to assure the undersigned "that the Imperial government is disposed to cultivate relations of friendship and good understanding with the United States."

The President receives this assurance of the disposition of the Imperial government with great satisfaction; and, in consideration of the friendly relations of the two governments thus mutually recognized, and of the peculiar nature of the incidents by which their good understanding is supposed by Mr. Hülsemann to have been for a moment disturbed or endangered, the President regrets that Mr. Hülsemann did not feel himself at liberty wholly to forbear from the execution of instructions, which were of course transmitted from Vienna without any foresight of the state of things under which they would reach Washington. If Mr. Hülsemann saw, in the address of the President to the diplomatic corps, satisfactory pledges of the sentiments and the policy of this government in regard to neutral rights and neutral duties, it might, perhaps, have been better not to bring on a discussion of past transactions. But the undersigned readily admits that this was a question fit only for the consideration and decision of Mr. Hülsemann himself; and although the President does not see that any good purpose can be answered by reopening the inquiry into the propriety of the steps taken by President Taylor to ascertain the probable issue of the late civil war in Hungary, justice to his memory requires the undersigned briefly to restate the history of those steps, and to show their consistency with the neutral policy which has invariably guided the government of the United States in its foreign relations, as well as with the established and well-settled principles of national intercourse, and the doctrines of public law.

The undersigned will first observe, that the President is persuaded his Majesty the Emperor of Austria does not think that the government of the United States ought to view with unconcern the extraordinary events which have occurred, not only in his dominions, but in many other parts of Europe, since February, 1848. The government and people of the United States, like other intelligent governments and communities, take a lively interest in the movements and the events of this remarkable age, in whatever part of the world they may be exhibited. But the interest taken by the United States in those events has not proceeded from any disposition to depart from that neutrality toward foreign powers, which is among the deepest principles and the most cherished traditions of the political history of the Union. It has been the necessary effect of the unexampled character of the events themselves, which could not fail to arrest the attention of the contemporary world, as they will doubtless fill a memorable page in history.

But the undersigned goes further, and freely admits that, in proportion as these extraordinary events appeared to have their origin in those great ideas of responsible and popular government, on which the American constitutions themselves are wholly founded, they could not but command the warm sympathy of the people of this country. Well-known circumstances in their history, indeed their whole history, have made them the representatives of purely popular principles of government. In this light they now stand before the world. They could not, if they would, conceal their character, their condition, or their destiny. They could not, if they so desired, shut out from the view of mankind the causes which have placed them, in so short a national career, in the station which they now hold among the civilized states of the world. They could not, if they desired it, suppress either the thoughts or the hopes which arise in men's minds, in other countries, from contemplating their successful example of free government. That very intelligent and distinguished personage, the Emperor Joseph the Second, was among the first to discern this necessary consequence of the American Revolution on the sentiments and opinions of the people of Europe. In a letter to his minister in the Netherlands in 1787, he observes, that "it is remarkable that France, by the assistance which she afforded to the Americans, gave birth to

reflections on freedom." This fact, which the sagacity of that monarch perceived at so early a day, is now known and admitted by intelligent powers all over the world. True, indeed, it is, that the prevalence on the other continent of sentiments favorable to republican liberty is the result of the reaction of America upon Europe; and the source and centre of this reaction has doubtless been, and now is, in these United States.

The position thus belonging to the United States is a fact as inseparable from their history, their constitutional organization, and their character, as the opposite position of the powers composing the European alliance is from the history and constitutional organization of the government of those powers. The sovereigns who form that alliance have not unfrequently felt it their right to interfere with the political movements of foreign states; and have, in their manifestoes and declarations, denounced the popular ideas of the age in terms so comprehensive as of necessity to include the United States, and their forms of government. It is well known that one of the leading principles announced by the allied sovereigns, after the restoration of the Bourbons, is, that all popular or constitutional rights are holden no otherwise than as grants and indulgences from crowned heads. "Useful and necessary changes in legislation and administration," says the Laybach Circular of May, 1821, "ought only to emanate from the free will and intelligent conviction of those whom God has rendered responsible for power; all that deviates from this line necessarily leads to disorder, commotions, and evils far more insufferable than those which they pretend to remedy." And his late Austrian Majesty, Francis the First, is reported to have declared, in an address to the Hungarian Diet, in 1820, that "the whole world had become foolish, and, leaving their ancient laws, were in search of imaginary constitutions." These declarations amount to nothing less than a denial of the lawfulness of the origin of the government of the United States, since it is certain that that government was established in consequence of a change which did not proceed from thrones, or the permission of crowned heads. But the government of the United States heard these denunciations of its fundamental principles without remonstrance, or the disturbance of its equanimity. This was thirty years ago.

The power of this republic, at the present moment, is spread over a region one of the richest and most fertile on the globe, and of an extent in comparison with which the possessions of the house of Hapsburg are but as a patch on the earth's surface. Its population, already twenty-five millions, will exceed that of the Austrian empire within the period during which it may be hoped that Mr. Hülsemann may yet remain in the honorable discharge of his duties to his government. Its navigation and commerce are hardly exceeded by the oldest and most commercial nations; its maritime means and its maritime power may be seen by Austria herself, in all seas where she has ports, as well as they may be seen, also, in all other quarters of the globe. Life, liberty, property, and all personal rights, are amply secured to all citizens, and protected by just and stable laws; and credit, public and private, is as well established as in any government of Continental Europe; and the country, in all its interests and concerns, partakes most largely in all the improvements and progress which distinguish the age. Certainly, the United States may be pardoned, even by those who profess adherence to the principles of absolute government, if they entertain an ardent affection for those popular forms of political organization which have so rapidly advanced their own prosperity and happiness, and enabled them, in so short a period, to bring their country, and the hemisphere to which it belongs, to the notice and respectful regard, not to say the admiration, of the civilized world. Nevertheless, the United States have abstained, at all times, from acts of interference with the political changes of Europe. They cannot, however, fail to cherish always a lively interest in the fortunes of nations struggling for institutions like their own. But this sympathy, so far from being necessarily a hostile feeling toward any of the parties to these great national struggles, is quite consistent with amicable relations with them all. The Hungarian people are three or four times as numerous as the inhabitants of these United States were when the American Revolution broke out. They possess, in a distinct language, and in other respects, important elements of a separate nationality, which the Anglo-Saxon race in this country did not possess; and if the United States wish success to countries contending for popular constitutions and national independence, it is only because they regard such constitutions

and such national independence, not as imaginary, but as real blessings. They claim no right, however, to take part in the struggles of foreign powers in order to promote these ends. It is only in defence of his own government, and its principles and character, that the undersigned has now expressed himself on this subject. But when the people of the United States behold the people of foreign countries, without any such interference, spontaneously moving toward the adoption of institutions like their own, it surely cannot be expected of them to remain wholly indifferent spectators.

In regard to the recent very important occurrences in the Austrian empire, the undersigned freely admits the difficulty which exists in this country, and is alluded to by Mr. Hülsemann, of obtaining accurate information. But this difficulty is by no means to be ascribed to what Mr. Hülsemann calls, with little justice, as it seems to the undersigned, "the mendacious rumors propagated by the American press." For information on this subject, and others of the same kind, the American press is, of necessity, almost wholly dependent upon that of Europe; and if "mendacious rumors" respecting Austrian and Hungarian affairs have been anywhere propagated, that propagation of falsehoods has been most prolific on the European continent, and in countries immediately bordering on the Austrian empire. But, wherever these errors may have originated, they certainly justified the late President in seeking true information through authentic channels.

His attention was first particularly drawn to the state of things in Hungary by the correspondence of Mr. Stiles, Chargé d'Affaires of the United States at Vienna. In the autumn of 1848, an application was made to this gentleman, on behalf of Mr. Kossuth, formerly Minister of Finance for the Kingdom of Hungary by Imperial appointment, but, at the time the application was made, chief of the revolutionary government. The object of this application was to obtain the good offices of Mr. Stiles with the Imperial government, with a view to the suspension of hostilities. This application became the subject of a conference between Prince Schwarzenberg, the Imperial Minister for Foreign Affairs, and Mr. Stiles. The Prince commended the considerateness and propriety with which Mr. Stiles had acted; and, so far from disapproving his interference, advised him,



in case he received a further communication from the revolutionary government in Hungary, to have an interview with Prince Windischgrätz, who was charged by the Emperor with the proceedings determined on in relation to that kingdom. A week after these occurrences, Mr. Stiles received, through a secret channel, a communication signed by L. Kossuth, President of the Committee of Defence, and countersigned by Francis Pulszky, Secretary of State. On the receipt of this communication, Mr. Stiles had an interview with Prince Windischgrätz, "who received him with the utmost kindness, and thanked him for his efforts toward reconciling the existing difficulties." Such were the incidents which first drew the attention of the government of the United States particularly to the affairs of Hungary, and the conduct of Mr Stiles, though acting without instructions in a matter of much delicacy, having been viewed with satisfaction by the Imperial government, was approved by that of the United States.

In the course of the year 1848, and in the early part of 1849, a considerable number of Hungarians came to the United States. Among them were individuals representing themselves to be in the confidence of the revolutionary government, and by these persons the President was strongly urged to recognize the existence of that government. In these applications, and in the manner in which they were viewed by the President, there was nothing unusual; still less was there any thing unauthorized by the law of nations. It is the right of every independent state to enter into friendly relations with every other independent state. Of course, questions of prudence naturally arise in reference to new states, brought by successful revolutions into the family of nations; but it is not to be required of neutral powers that they should await the recognition of the new government by the parent state. No principle of public law has been more frequently acted upon, within the last thirty years, by the great powers of the world, than this. Within that period, eight or ten new states have established independent governments, within the limits of the colonial dominions of Spain, on this continent; and in Europe the same thing has been done by Belgium and Greece. The existence of all these governments was recognized by some of the leading powers of Europe, as well as by the United States, before it was acknowledged by

the states from which they had separated themselves. If, therefore, the United States had gone so far as formally to acknowledge the independence of Hungary, although, as the result has proved, it would have been a precipitate step, and one from which no benefit would have resulted to either party; it would not, nevertheless, have been an act against the law of nations, provided they took no part in her contest with Austria. But the United States did no such thing. Not only did they not yield to Hungary any actual countenance or succor, not only did they not show their ships of war in the Adriatic with any menacing or hostile aspect, but they studiously abstained from every thing which had not been done in other cases in times past, and contented themselves with instituting an inquiry into the truth and reality of alleged political occurrences. Mr. Hülsemann incorrectly states, unintentionally certainly, the nature of the mission of this agent, when he says that "a United States agent had been despatched to Vienna with orders to watch for a favorable moment to recognize the Hungarian republic, and to conclude a treaty of commerce with the same." This, indeed, would have been a lawful object, but Mr. Mann's errand was, in the first instance, purely one of inquiry. He had no power to act, unless he had first come to the conviction that a firm and stable Hungarian government existed. "The principal object the President has in view," according to his instructions, "is to obtain minute and reliable information in regard to Hungary, in connection with the affairs of adjoining countries, the probable issue of the present revolutionary movements, and the chances we may have of forming commercial arrangements with that power favorable to the United States." Again, in the same paper, it is said: "The object of the President is to obtain information in regard to Hungary, and her resources and prospects, with a view to an early recognition of her independence and the formation of commercial relations with her." It was only in the event that the new government should appear, in the opinion of the agent, to be firm and stable, that the President proposed to recommend its recognition.

Mr. Hülsemann, in qualifying these steps of President Taylor with the epithet of "hostile," seems to take for granted that the inquiry could, in the expectation of the President, have but one result, and that favorable to Hungary. If this were so, it would

not change the case. But the American government sought for nothing but truth; it desired to learn the facts through a reliable channel. It so happened, in the chances and vicissitudes of human affairs, that the result was adverse to the Hungarian revolution. The American agent, as was stated in his instructions to be not unlikely, found the condition of Hungarian affairs less prosperous than it had been, or had been believed to be. He did not enter Hungary, nor hold any direct communication with her revolutionary leaders. He reported against the recognition of her independence, because he found she had been unable to set up a firm and stable government. He carefully forbore, as his instructions required, to give publicity to his mission, and the undersigned supposes that the Austrian government first learned its existence from the communications of the President to the Senate.

Mr. Hülsemann will observe from this statement, that Mr. Mann's mission was wholly unobjectionable, and strictly within the rule of the law of nations and the duty of the United States as a neutral power. He will accordingly feel how little foundation there is for his remark, that "those who did not hesitate to assume the responsibility of sending Mr. Dudley Mann on such an errand, should, independent of considerations of propriety, have borne in mind that they were exposing their emissary to be treated as a spy." A spy is a person sent by one belligerent to gain secret information of the forces and defences of the other, to be used for hostile purposes. According to practice, he may use deception, under the penalty of being lawfully hanged if detected. To give this odious name and character to a confidential agent of a neutral power, bearing the commission of his country, and sent for a purpose fully warranted by the law of nations, is not only to abuse language, but also to confound all just ideas, and to announce the wildest and most extravagant notions, such as certainly were not to have been expected in a grave diplomatic paper; and the President directs the undersigned to say to Mr. Hülsemann, that the American government would regard such an imputation upon it by the Cabinet of Austria as that it employs spies, and that in a quarrel none of its own, as distinctly offensive, if it did not presume, as it is willing to presume, that the word used in the original German was not of equivalent meaning with "spy" in the

English language, or that in some other way the employment of such an opprobrious term may be explained. Had the Imperial government of Austria subjected Mr. Mann to the treatment of a spy, it would have placed itself without the pale of civilized nations; and the Cabinet of Vienna may be assured, that if it had carried, or attempted to carry, any such lawless purpose into effect, in the case of an authorized agent of this government, the spirit of the people of this country would have demanded immediate hostilities to be waged by the utmost exertion of the power of the republic, military and naval.

Mr. Hülsemann proceeds to remark, that "this extremely painful incident, therefore, might have been passed over, without any written evidence being left on our part in the archives of the United States, had not General Taylor thought proper to revive the whole subject by communicating to the Senate, in his message of the 18th [28th] of last March, the instructions with which Mr. Mann had been furnished on the occasion of his mission to Vienna. The publicity which has been given to that document has placed the Imperial government under the necessity of entering a formal protest, through its official representative, against the proceedings of the American government, lest that government should construe our silence into approbation, or toleration even, of the principles which appear to have guided its action and the means it has adopted." The undersigned re-asserts to Mr. Hülsemann, and to the Cabinet of Vienna, and in the presence of the world, that the steps taken by President Taylor, now protested against by the Austrian government, were warranted by the law of nations and agreeable to the usages of civilized states. With respect to the communication of Mr. Mann's instructions to the Senate, and the language in which they are couched, it has already been said, and Mr. Hülsemann must feel the justice of the remark, that these are domestic affairs, in reference to which the government of the United States cannot admit the slightest responsibility to the government of his Imperial Majesty. No state, deserving the appellation of independent, can permit the language in which it may instruct its own officers in the discharge of their duties to itself to be called in question under any pretext by a foreign power.

But even if this were not so, Mr. Hülsemann is in an error

in stating that the Austrian government is called an "iron rule" in Mr. Mann's instructions. That phrase is not found in the paper; and in respect to the honorary epithet bestowed in Mr. Mann's instructions on the late chief of the revolutionary government of Hungary, Mr. Hülsemann will bear in mind that the government of the United States cannot justly be expected, in a confidential communication to its own agent, to withhold from an individual an epithet of distinction of which a great part of the world thinks him worthy, merely on the ground that his own government regards him as a rebel. At an early stage of the American Revolution, while Washington was considered by the English government as a rebel chief, he was regarded on the Continent of Europe as an illustrious hero. But the undersigned will take the liberty of bringing the Cabinet of Vienna into the presence of its own predecessors, and of citing for its consideration the conduct of the Imperial government itself. In the year 1777 the war of the American Revolution was raging all over these United States. England was prosecuting that war with a most resolute determination, and by the exertion of all her military means to the fullest extent. Germany was at that time at peace with England; and yet an agent of that Congress, which was looked upon by England in no other light than that of a body in open rebellion, was not only received with great respect by the ambassador of the Empress Queen at Paris, and by the minister of the Grand Duke of Tuscany (who afterwards mounted the Imperial throne), but resided in Vienna for a considerable time; not, indeed, officially acknowledged, but treated with courtesy and respect; and the Emperor suffered himself to be persuaded by that agent to exert himself to prevent the German powers from furnishing troops to England to enable her to suppress the rebellion in America. Neither Mr. Hülsemann nor the Cabinet of Vienna, it is presumed, will undertake to say that any thing said or done by this government in regard to the recent war between Austria and Hungary is not borne out, and much more than borne out, by this example of the Imperial Court. It is believed that the Emperor Joseph the Second habitually spoke in terms of respect and admiration of the character of Washington, as he is known to have done of that of Franklin; and he deemed it no infraction of neutrality to inform himself of the progress of the revolutionary struggle

in America, or to express his deep sense of the merits and the talents of those illustrious men who were then leading their country to independence and renown. The undersigned may add, that in 1781 the courts of Russia and Austria proposed a diplomatic congress of the belligerent powers, to which the commissioners of the United States should be admitted.

Mr. Hülsemann thinks that in Mr. Mann's instructions improper expressions are introduced in regard to Russia; but the undersigned has no reason to suppose that Russia herself is of that opinion. The only observation made in those instructions about Russia is, that she "has chosen to assume an attitude of interference, and her immense preparations for invading and reducing the Hungarians to the rule of Austria, from which they desire to be released, gave so serious a character to the contest as to awaken the most painful solicitude in the minds of Americans." The undersigned cannot but consider the Austrian Cabinet as unnecessarily susceptible in looking upon language like this as a "hostile demonstration." If we remember that it was addressed by the government to its own agent, and has received publicity only through a communication from one department of the American government to another, the language quoted must be deemed moderate and inoffensive. The comity of nations would hardly forbid its being addressed to the two imperial powers themselves. It is scarcely necessary for the undersigned to say, that the relations of the United States with Russia have always been of the most friendly kind, and have never been deemed by either party to require any compromise of their peculiar views upon subjects of domestic or foreign polity, or the true origin of governments. At any rate, the fact that Austria, in her contest with Hungary, had an intimate and faithful ally in Russia, cannot alter the real nature of the question between Austria and Hungary, nor in any way affect the neutral rights and duties of the government of the United States, or the justifiable sympathies of the American people. It is, indeed, easy to conceive, that favor toward struggling Hungary would be not diminished, but increased, when it was seen that the arm of Austria was strengthened and upheld by a power whose assistance threatened to be, and which in the end proved to be, overwhelmingly destructive of all her hopes.

Toward the conclusion of his note Mr. Hülsemann remarks,

that "if the government of the United States were to think it proper to take an indirect part in the political movements of Europe, American policy would be exposed to acts of retaliation, and to certain inconveniences which would not fail to affect the commerce and industry of the two hemispheres." As to this possible fortune, this hypothetical retaliation, the government and people of the United States are quite willing to take their chances and abide their destiny. Taking neither a direct nor an indirect part in the domestic or intestine movements of Europe, they have no fear of events of the nature alluded to by Mr. Hülsemann. It would be idle now to discuss with Mr. Hülsemann those acts of retaliation which he imagines may possibly take place at some indefinite time hereafter. Those questions will be discussed when they arise; and Mr. Hülsemann and the Cabinet at Vienna may rest assured, that, in the mean time, while performing with strict and exact fidelity all their neutral duties, nothing will deter either the government or the people of the United States from exercising, at their own discretion, the rights belonging to them as an independent nation, and of forming and expressing their own opinions, freely and at all times, upon the great political events which may transpire among the civilized nations of the earth. Their own institutions stand upon the broadest principles of civil liberty; and believing those principles and the fundamental laws in which they are embodied to be eminently favorable to the prosperity of states, to be, in fact, the only principles of government which meet the demands of the present enlightened age, the President has perceived, with great satisfaction, that, in the constitution recently introduced into the Austrian empire, many of these great principles are recognized and applied, and he cherishes a sincere wish that they may produce the same happy effects throughout his Austrian Majesty's extensive dominions that they have done in the United States.

The undersigned has the honor to repeat to Mr. Hülsemann the assurance of his high consideration.

DANIEL WEBSTER.

THE CHEVALIER J. G. HÜLSEMANN, *Chargé d'Affaires of Austria, Washington.*

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## *The Chevalier Hülseman to Mr. Webster.*

Austrian Legation at Washington, March 11, 1851

MR. SECRETARY OF STATE, — I have received an answer to the despatches with which I had sent to Vienna the note that you did me the honor to address to me on the 21st of December last; and I hasten to inform you, Mr. Secretary of State, that the arguments contained in your note have not had power to change the judgment which the Imperial Cabinet had formed respecting the mission of Mr. Dudley Mann, as well as respecting the tenor and the terms of the instructions with which he was furnished. The Imperial government does not cease to entertain the opinions contained in my note of the 30th of September; and it declines all ulterior discussion of that annoying incident, unwilling to expose the kind and friendly relations which it desires to preserve with the government of the United States to the danger of being seriously disturbed by discussions which could have no practical result.

President Fillmore declared, in his message of the 2d of December last, that he was determined to act towards other nations as the United States desired that other nations should act towards them; and that he had adopted as a rule for his policy good-will towards foreign powers, and the abstaining from interference in their internal affairs. Austria has not demanded, and will never demand, any thing but the putting into practice of these principles; and the Imperial government is sincerely disposed to remain in friendly relations with the government of the United States, so long as the United States shall not deviate from these principles.

Please to accept, Mr. Secretary of State, the assurances of my high consideration.

HÜLSEMANN.

THE HON. DANIEL WEBSTER, *Secretary of State of the United States.*

## *Mr. Webster to the Chevalier Hülseman.*

Department of State, Washington, March 15, 1851.

The undersigned has the honor to acknowledge the receipt of the Chevalier Hülseman's note of the 11th of this month, which has been submitted to the President.

The President regrets that the note of the undersigned, ad-



dressed to the Chevalier Hülsemann on the 21st of December last, was not satisfactory to the Imperial government, and that its opinion remains unchanged respecting the mission of Mr. A. Dudley Mann, and the instructions with which he was furnished. He is gratified, however, to learn that the Imperial government desires to continue the friendly relations now so happily subsisting between the two governments, a desire in which he cordially concurs.

The President is also gratified to learn that the sentiments respecting the international relations between the United States and foreign powers, contained in his last annual message, meet the approbation of the Imperial government; and he directs the undersigned to assure the Chevalier Hülsemann that he intends to act steadily in accordance with those sentiments.

The government of the United States is as little inclined as the Cabinet at Vienna to prolong the discussion of the topics to which the Chevalier Hülsemann's note of the 30th of September of last year gave rise.

In his reply to that note, the undersigned stated the grounds upon which this government held itself justified in every thing which it had done connected with the mission of Mr. A. Dudley Mann, and the instructions which were given to him; and he took the occasion also of declaring the principles and the policy which the United States maintain, as appropriate to their condition, and as being, indeed, fixed and fastened upon them by their character, their history, and their position among the nations of the world; and it may be regarded as certain that these principles and this policy will not be abandoned or departed from until some extraordinary change shall take place in the general current of human affairs.

The undersigned renews to the Chevalier Hülsemann the expression of his sentiments of regard.

DANIEL WEBSTER.

THE CHEVALIER J. G. HÜLSEMANN, *Chargé d'Affaires of Austria, Washington.*

## Excesses Committed at New Orleans

*Mr. Webster to Don A. Calderon de la Barca, Minister of Spain  
to the United States.*

Department of State, Washington, November 13, 1851.

THE undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Señor Don A. Calderon de la Barca, Envoy Extraordinary and Minister Plenipotentiary of her Catholic Majesty, of the 14th of last month, upon the subject of the excesses committed at New Orleans upon the house of the Spanish consul, and also on the property of certain individuals, subjects of her Catholic Majesty.

Mr. Calderon has written and acted on this occasion, as well as on others growing out of similar occurrences, with his accustomed zeal, as well as with fidelity to his government; and he has met, and will meet, on the part of that of the United States, an entire readiness to listen most respectfully to his representations, and to do all that honor, good faith, and the friendly relations subsisting between the United States and Spain may appear to demand.

The first rumor of the outrage at New Orleans induced the government of the United States to take immediate steps to become acquainted with the particulars. It was regarded as a case in which the honor of the country was involved; and, as Mr. Calderon has already been informed by this department, the Attorney of the United States for the District of Louisiana was instructed to cause inquiry to be made into the circumstances attending the occurrences, and to report the same to this department. The report of the District Attorney has been received, and a copy of it is now communicated to Mr. Calderon for his

information. It is accompanied, as will be perceived, by a statement of the Mayor of the city of New Orleans, whose duty, as well as whose inclination, led him to make himself acquainted with every thing which took place.

From these authentic sources of information, it appears that, on the morning of the 21st of August, the steamer "Crescent City" arrived at New Orleans from Havana, with intelligence of the execution of the fifty persons who were captured near the coast of Cuba. Mr. Brincio, the secretary of the Spanish consul, was a passenger in the steamer, and was understood to have been intrusted by the Captain-General with letters written by the persons who were afterwards executed to their friends in the United States. Instead of putting these letters into the post-office at once, on his arrival, he retained them, as was alleged. This occasioned an impression that he acted with great impropriety, and a report became current that the consul had refused to deliver the letters when requested. Written placards were accordingly posted up in the city, threatening an attack on the office of the Spanish newspaper called "La Union" during the ensuing night. This attack was probably precipitated by an extra sheet, issued from the office of that paper at half past two o'clock in the afternoon, giving an account of the execution of the fifty persons at Havana; as the attack was made between three and four o'clock the same afternoon, and before the public authorities were, or could be, prepared to prevent it. During the attack, however, no personal injury was offered to any one. Afterwards, attacks were made upon coffee-houses and cigar-shops kept by Spaniards. Between five and six o'clock, the same afternoon, Mr. Genois, the Recorder of the First Municipality, hearing that an assault was threatened on the consul's office, situated in that municipality, repaired thither, accompanied by some of the police. He found the streets filled with people, the doors of the office broken open, and seven or eight persons in the act of breaking and destroying the furniture. He commanded the rioters to desist, and they withdrew, after obtaining possession of the consul's sign, which they took to a public square, and there burnt. After the departure of the mob, the doors of the consul's office were fastened up by the officers, and the police retired, not apprehending that the attack would be renewed. Within an hour, however, the rioters re-

turned, forced their way into the office, destroyed all the remaining furniture, threw the archives into the street, defaced the portraits of the Queen of Spain and of the Captain-General of Cuba, and tore in pieces the flag which they found in the office. This is believed to be a true account of every thing material which took place.

The undersigned has now to say, that the executive government of the United States regards these outrages not only as unjustifiable, but as disgraceful acts, and a flagrant breach of duty and propriety; and that it disapproves them as seriously, and regrets them as deeply, as either Mr. Calderon or his government can possibly do. The Spanish consul was in this country discharging official duties, and protected not only by the principles of public and national law, but also by the express stipulations of treaties; and the undersigned is directed to give to Mr. Calderon, to be communicated to his government, the President's assurance that these events have caused him great pain, and that he thinks a proper acknowledgment is due to her Catholic Majesty's government. But the outrage, nevertheless, was one perpetrated by a mob, composed of irresponsible persons, the names of none of whom are known to this government; nor, so far as the government is informed, to its officers or agents in New Orleans. And the undersigned is happy to assure Mr. Calderon, that neither any officer or agent of the government of the United States, high or low, nor any officer of the State of Louisiana, high or low, or of the municipal government of the city of New Orleans, took any part in the proceeding, so far as appears, or gave it any degree of countenance whatever. On the contrary, all these officers and agents, according to the authentic accounts of the Mayor and District Attorney, did all which the suddenness of the occasion would allow to prevent it.

The assembling of mobs happens in all countries; popular violences occasionally break out everywhere, setting law at defiance, trampling on the rights of citizens and private men, and sometimes on those of public officers, and the agents of foreign governments, especially entitled to protection. In these cases the public faith and national honor require, not only that such outrages should be disavowed, but also that the perpetrators of them should be punished wherever it is possible to bring them to justice; and, further, that full satisfaction should be made,

in cases in which a duty to that effect rests with the government, according to the general principles of law, public faith, and the obligation of treaties.

Mr. Calderon thinks that the enormity of this act of popular violence is heightened by its insult to the flag of Spain. The government of the United States would earnestly deprecate any indignity offered in this country, in time of peace, to the flag of a nation so ancient, so respectable, so renowned, as Spain. No wonder that Mr. Calderon should be proud, and that all patriotic Spaniards of this generation should be proud, of that Castilian ensign, which, in times past, has been reared so high, and waved so often over fields of acknowledged and distinguished valor; and which has floated also, without stain, on all seas, and especially, in early days, on those seas which wash the shores of all the Indies. Mr. Calderon may be assured that the government of the United States does not and cannot desire to witness the desecration or degradation of the national banner of his country.

It appears, however, that in point of fact no flag was actually flying, or publicly exhibited, when the outrage took place; but this can make no difference in regard to the real nature of the offence, or its enormity. The persons composing the mob knew that they were offering insult and injury to an officer of her Catholic Majesty, residing in the United States under the sanction of laws and treaties, and therefore their conduct admits of *no* justification. Nevertheless, Mr. Calderon and his government are aware that recent intelligence had then been received from Havana, not a little calculated to excite popular feeling in a great city, and to lead to popular excesses. If this be no justification, as it certainly is none, it may still be taken into view and regarded as showing that the outrage, however flagrant, was committed in the heat of blood, and not in pursuance of any predetermined plan or purpose of injury or insult.

The people of the United States are accustomed, in all cases of alleged crime, to slow and cautious investigation and deliberate trial before sentence of condemnation is passed, however apparent or however enormous the imputed offence may be. No wonder, therefore, that the information of the execution, so soon after their arrest, of the persons above referred to, most of whom were known in New Orleans, and who were taken, not

in Cuba, but at sea endeavoring to escape from the island, should have produced a belief, however erroneous, that they had been executed without any trial whatever, and caused an excitement in the city the outbreak of which the public authorities were unable for the moment to prevent or control.

Mr. Calderon expresses the opinion, that not only ought indemnification to be made to Mr. Laborde, her Catholic Majesty's consul, for injury and loss of property, but that reparation is due also from the government of the United States to those Spaniards residing in New Orleans whose property was injured or destroyed by the mob, and intimates that such reparation had been verbally promised to him. The undersigned sincerely regrets that any misapprehension should have grown up out of any conversation between Mr. Calderon and officers of this government on this unfortunate and unpleasant affair; but, while this government has manifested a willingness and determination to perform every duty which one friendly nation has a right to expect from another in cases of this kind, it supposes that the rights of the Spanish consul, a public officer residing here under the protection of the United States government, are quite different from those of the Spanish subjects who have come into the country to mingle with our own citizens, and here to pursue their private business and objects. The former may claim special indemnity; the latter are entitled to such protection as is afforded to our own citizens. While, therefore, the losses of individuals, private Spanish subjects, are greatly to be regretted, yet it is understood that many American citizens suffered equal losses from the same cause; and these private individuals, subjects of her Catholic Majesty, coming voluntarily to reside in the United States, have certainly no cause of complaint, if they are protected by the same laws, and the same administration of law, as native-born citizens of this country. They have, in fact, some advantages over citizens of the State in which they happen to be, inasmuch as they are enabled, until they become citizens themselves, to prosecute for any injuries done to their persons or property in the courts of the United States, or the State courts, at their election.

The President is of opinion, as already stated, that, for obvious reasons, the case of the consul is different, and that the government of the United States should provide for Mr. Laborde a

just indemnity; and a recommendation to that effect will be laid before Congress at an early period of its approaching session. This is all which it is in his power to do. The case may be a new one, but the President, being of opinion that Mr. Laborde ought to be indemnified, has not thought it necessary to search for precedents.

In conclusion, the undersigned has to say, that if Mr. Laborde shall return to his post, or any other consul for New Orleans shall be appointed by her Catholic Majesty's government, the officers of this government resident in that city will be instructed to receive and treat him with courtesy, and with a national salute to the flag of his ship, if he shall arrive in a Spanish vessel, as a demonstration of respect, such as may signify to him, and to his government, the sense entertained by the government of the United States of the gross injustice done to his predecessor by a lawless mob, as well as the indignity and insult offered by it to a foreign state with which the United States are, and wish ever to remain, on terms of the most respectful and pacific intercourse.

The undersigned avails himself of this occasion to offer to Mr. Calderon renewed assurances of his distinguished consideration.

DANIEL WEBSTER.

DON A. CALDERON DE LA BARCA, *Minister of Spain to the United States.*

## The Lopez Expedition

*Mr. Webster to Mr. Barringer, Minister of the United States to Spain.*

Department of State, Washington, November 26, 1851.

SIR, — Your despatches to No. 64, inclusive, have been received. I am happy to inform you that the complaints of her Catholic Majesty's government, respecting insults to the Spanish consul and flag by a mob at New Orleans, and other acts of violence against the property of her subjects in this country, all occasioned by the excitement growing out of the late invasion of Cuba and its incidents and consequences, have been made the subject of a correspondence between this Department and Mr. Calderon, her Majesty's minister here. A copy of this correspondence is herewith transmitted to you, by which you will perceive that those complaints have been met by the government of the United States in a manner satisfactory to the representative of Spain. Her Catholic Majesty's government must be too just to suppose for a moment, either that the government of the United States has connived at the several invasions of Cuba by persons proceeding from our ports, or that any thing within the power of the government has been omitted for preventing those invasions, and for punishing those concerned in them. It has now been many months that these hostile designs against Cuba have occupied the attention of the government of the United States, from week to week and from day to day. The most zealous efforts have been made to bring to condign punishment all who have been disposed to violate the laws of their own country, by making war upon a Spanish possession. Her Catholic Majesty's government is quite well aware that the



principal instigator of this criminal invasion of Cuba, and the leader of the expedition, was one of her Majesty's subjects, who came to this country and abused its hospitality by inducing American citizens, mostly young and ill-informed persons, to embark in his cause and follow his standard. There is good reason to believe, that but for this agency, and that of other Spaniards who had come to the country, no expedition against Cuba would ever have been set on foot. The policy of the United States is the policy of peace, until there shall arise just cause of war. The colonies of Spain are near to our own shores. Our commerce with them is large and important, and the records of the diplomatic intercourse between the two countries will show to her Catholic Majesty's government how sincerely and how steadily the United States have manifested the hope that no political changes might lead to a transfer of these colonies from her Majesty's crown. If there is one among the existing governments of the civilized world which for a long course of years has diligently sought to maintain amicable relations with Spain, it is the government of the United States.

Not only does the correspondence between the two governments show this, but the same truth is established by the history of the legislation of the country, and the general course of the executive government. In this recent invasion, Lopez and his fellow-subjects in the United States succeeded in deluding a few hundred men, by a long-continued and systematic misrepresentation of the political condition of the island, and of the wishes of its inhabitants. And it is not for the purpose of reviving unpleasant recollections that her Majesty's government is reminded, that it is not many years since the commerce of the United States suffered severely from armed boats and vessels which found refuge and shelter in the ports of the Spanish islands. These violations of the law, these authors of gross violence towards the citizens of this republic, were finally suppressed, not by any effort of the Spanish authorities, but by the activity and vigilance of our navy. This, however, was not accomplished but by the efforts of several years, nor until many valuable lives, as well as a vast amount of property, had been lost. Among others, Lieutenant Allen, a very valuable and distinguished officer in the naval service of the United States, was killed in an action with these banditti.

All this is not said for the purpose of making or renewing complaints, either of the violation of treaty obligations or of unjustifiable remissness, against the government of Spain or the authorities of the islands. But it may be brought to the notice of the Spanish government as one of the consequences which may sometimes flow from the conduct of men disposed to carry on criminal enterprises, and favored, in the execution of such enterprises, by the contiguity of the possessions of the two governments. The Spanish islands lie near the coast of America, and the use of steam has rendered the passage from one to the other short; but while this facilitates the accomplishment of the purposes of wrongdoers, on the other hand it augments the means of government to pursue, overtake, and disperse them, or bring them to proper trial and punishment. In truth, steam has greatly increased the proximity of Cuba to the United States. We have become much nearer neighbors than formerly, and the duty which this new state of things devolves on both governments is to keep a closer and stricter watch on their subjects and citizens respectively, in order that no violation of treaty obligations, and no interruption of the peace and amity existing between the two governments, may take place. And this duty will be performed on the part of the United States diligently and faithfully, in the true spirit of treaties, as well as in the proper execution of the laws. You are at liberty to communicate these observations to the government of her Catholic Majesty.

I have now to call your attention to another subject of much interest. We have learned that a hundred and sixty-two of the persons captured on the island of Cuba, as having constituted a part of Lopez's forces, have been sent to Spain. We have no official information respecting their trial or sentence, or of their subsequent destination, but it is generally reported that they have been or are to be sent to the mines. The government of the United States has admitted that these violators both of the law of nations and of the laws of their own country have no legal claim for its protection. Yet they are men, and most of them ignorant or deluded men. It cannot be denied that they are, as such, objects of compassion; and I think I may say, that severe punishment inflicted on so many persons for an attempt which has ended in a failure so signal, and for an offence which, however

grave, has already been expiated by the lives of a majority of those who participated in it, might be regarded as inconsistent with feelings of humanity and that generosity of sentiment which may not unreasonably be looked for from the sovereign of a great nation. This seems to have been the sentiment entertained by the Captain-General of Cuba, under the influence of which he pardoned several of the captives; and her Majesty's government may be assured, that this wise and well-considered exercise of clemency and mercy has produced the best effects in this country. He has said, that in the executions ordered by him he acted under a conviction of the absolute necessity of setting an example which might deter others from the performance of acts of similar criminality. That example has been set by the infliction of a punishment as prompt as it was awful, by the execution of fifty persons. The knowledge of their miserable fate has been carried to every man in this country, and spread all over the world.

Is not this enough? Can example be made more terrific? Certainly an act of clemency on the part of the Spanish government could not now be thought a symptom of weakness. May not the sword of justice be now sheathed without danger, and the voice of Christian humanity be allowed to be heard? And even if the Spanish government can entertain no great feeling of compassion for these deluded and offending men themselves, is it not highly just and proper to consider that they have friends and families, distressed fathers and mothers, weeping brothers and sisters, all of them unoffending, and some of them most respectable persons? Application has been made for the interposition of the kind offices of this government from fathers, whose sons (thoughtless young men, seduced by the efforts of Lopez and his associates) eloped from their own homes and joined the expedition without the knowledge of their friends. I am aware, that, in regard to the results of the Cuban invasion, all cause for sympathy and compassion is not on one side. I am aware that a general officer in her Majesty's service was slain, and that many Spanish soldiers and Spanish subjects lost their lives in defence of their government and of their own homes. But the President thinks that it is wise to suffer oblivion to cover the past. He is anxious for the removal of every cause which might tend to keep alive ill-will between the citi-

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zens and subjects of the two countries. So long as these prisoners shall continue to be suffering a severe and lingering punishment in a foreign land, so long will efforts be constantly made by their friends to procure their release, by appeals to the good offices of their government. The tendency of these applications can only be to keep alive a very considerable irritation. It is in consideration of this, and from a strong wish for the extinguishment of all feelings of that kind, that, in the judgment of the President, nothing would be more useful than the granting of her Majesty's pardon to the residue of these prisoners, and suffering them to return to their own homes.

Those who were pardoned by the Captain-General of Cuba appear to have been among the most prominent and well-informed members of the expedition. The friendless are left to their fate, although less culpable, as being less informed of their duties and obligations. It seems invidious and unjust to make distinctions of this kind. You say that the existing belief in Spain is, that the result of the expedition has strengthened the hands of the Spanish government, and given new security to its possession of the island. A similar sentiment prevails, to some extent, here.

We are not apprised of the disposition which may have been made of the prisoners, who, as you state in your No. 62, have arrived at Vigo. In answer to your inquiry as to whether, in any event, and to what extent, assistance in clothing, or other necessities, might be furnished to such as might need and apply for the same on account of the United States, I have to remark, that it is expected that none of the needy among the prisoners will be allowed to suffer for want of the necessaries of life. You will accordingly take care that their wants are provided for.

An application will be made to Congress for an appropriation towards defraying any expenses which may thereby be occasioned.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

TO D. M. BARRINGER, Esq., &c.

# The Case of Thrasher

*Mr. Webster to Mr. Barringer.*

Department of State, Washington, December 13, 1851.

SIR, — The object of this despatch is to call your attention particularly to the case of John S. Thrasher, a native-born citizen of the United States, but for some years past a resident in Havana, and there lately tried for high treason or conspiracy, convicted, sentenced to eight years' confinement to hard labor, and sent to Spain in execution of that sentence. He has respectable friends and connections in the United States who feel much interest for him, and who have pressed his case upon the consideration of this department, earnestly invoking the interposition of the government in his behalf.

It is much to be regretted that Mr. Thrasher has made no communication whatever to this department respecting the circumstances of his case, so as to enable us to see what are the precise grounds of his complaint.

We have used all the means in our power to learn the particulars, as you will perceive by copies of two letters addressed by this department to the American consul at Havana. To these letters we have received as yet no answer. A despatch on this subject was prepared for you some days ago, but before it was delivered to the messenger a communication was received from Mr. Calderon, her Majesty's plenipotentiary here, communicating a copy of a letter of the Governor-General of Cuba to him, and also an opinion of the Real Audiencia Pretorial (Royal Court of Judicature) upon the construction of the seventh article of the treaty between the United States and Spain. The translation of these documents has

necessarily caused some delay. You will perceive that the Spanish authorities of the island represent that Mr. Thrasher had been long a resident in Havana; had become domiciled there, and had taken the oath of allegiance to the Spanish crown; and therefore, as they suppose, was answerable to the ordinary tribunals of the country for any criminal act committed by him.

This causes it to be the more regretted that he has made no communication to the government of his own case, as he understands it. He has indeed, through the press, addressed a general letter of remonstrance to the government and people of the United States, and this is all we hear from him personally. Nevertheless, his case has been thought deserving of attention, and there is a wish on the part of government to do all which may be proper in his behalf. If the official account of the Spanish authorities be correct, Mr. Thrasher appears to have *expatriated himself*, and to have become, at least for the time, a subject of the Crown of Spain. He had chosen a new government and a new home; and so long as he chose to remain under the authority and protection of that government, he would seem to have little right to set up against it any immunity founded on his original and native character as a citizen of the United States. There is no doubt that any one who chooses to reside in a country is bound to conform to its laws, and is amenable to its tribunals for their violation; the more especially if he has promised subjection and obedience to those laws, and taken an oath of allegiance to the sovereign power.

Mr. Thrasher's friends insist, nevertheless, that on his trial he was deprived of certain privileges secured to citizens of the United States by the seventh article of our treaty with Spain of 1795. But it may be doubtful whether, after having sworn allegiance to the Spanish government, he can longer claim the privileges and immunities of an American citizen. In the United States, as you know, the oath of allegiance is the consummation of the proceedings by which a foreigner becomes a citizen of this country, and renounces all allegiance to every foreign government. It may be doubtful, also, whether, if he were to be regarded in all respects as an American citizen, the provisions of the seventh article of the treaty of 1795 have been violated in his case.

Probably, under existing circumstances, the most useful course for the government of the United States to pursue in his behalf, and in order to obtain his release, is to make the same application for him which has been made in favor of the persons connected with the expedition of Lopez, who have, in like manner, been sent to Spain. His case, however, is certainly less flagrant than theirs. They were violent invaders, proceeding to Cuba with arms in their hands to make war upon the Spanish government and people. He at most could be only guilty of some connivance, or secret countenance, of these unlawful proceedings. You will perceive, therefore, that his case is one more fit for a lenient consideration than that of those with whom the project of invasion originated, and who were made prisoners in attempting its forcible execution. You will present this point as fully as may be to the consideration of the Queen's government, and urge it with earnestness.

In the instruction of this department, No. 48, considerations were presented which it was hoped would prevail on that government to release those persons who had been taken prisoners in the expedition of Lopez. The expectation that such a release would be ordered is now a good deal strengthened by information which the department has received, that those of the prisoners who were British subjects have already been liberated.

Mr. Thrasher is represented as an amiable and intelligent man, and, as his friends represent the matter, his conduct was principally instigated, not so much by sympathy with the invaders in their general objects, as by a desire to minister to their necessities. We cannot judge of this, because we have neither any proof nor any statement of the particular acts in which the alleged treason or conspiracy consisted. But, however this may be, you will present to her Catholic Majesty's government, in as strong a manner as may be consistent with propriety, the expediency of pardoning him with the rest, so that nothing may remain in the form of lingering punishment of an individual to keep alive the recollection of occurrences equally lamented by both governments. The unthinking and imprudent have been most severely admonished by events; those who violated the law have seen that punishment always awaits such violation; and we may be allowed to hope that the exercise on the part of her Majesty's government of forbearance and clemency will not tend to encourage criminal enterprises in future.

Her Majesty's government cannot doubt the motives which have actuated that of the United States in preventing and repressing, to the utmost of its power, these invasions of Spanish territory. It cannot doubt its full and perfect disposition to fulfil all its obligations, and to maintain with Spain the most friendly relations. And the President directs me to say, that he hopes that her Majesty's government, being thus fully assured of the entire good faith of that of the United States, will readily listen to the suggestions which I have been directed to make in behalf of all the prisoners; and I repeat, with a still more strengthened conviction, the sentiment which I expressed in my despatch No. 48, that the restoration of perfect harmony and solid and durable peace between the two countries will be aided and promoted by the release of all these miserable men from further imprisonment.

With a view to its safety and despatch, this instruction is sent to you by a special bearer.

I am, Sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

TO DANIEL M. BARRINGER, Esq., &c., &c., Madrid.

## *Mr. Webster to the President of the United States.*

Department of State, Washington, December 23, 1851.

The Secretary of State, to whom has been referred a resolution of the House of Representatives of the 15th instant, in the following words: "*Resolved*, That the President of the United States be requested, so far as in his judgment may be compatible with the public interest, to communicate to this House any information in possession of the executive respecting the imprisonment, trial, and sentence of John S. Thrasher, in the island of Cuba, and his right to claim the protection of the government as a native-born citizen of the United States"; has the honor to report to the President, that all the official information in possession of this department respecting the imprisonment, trial, and sentence of Mr. John S. Thrasher, is contained in the despatches of Allen F. Owen, Esquire, late United States Consul at Havana, together with a correspondence between him and the Governor-General of the island of Cuba, and in a letter addressed by the Governor-General to Don A. Calderon de la Barca, her Catholic Majesty's Minister



in the United States; copies of all of which are herewith transmitted.

There is no doubt that John S. Thrasher is a citizen of the United States by birth, nor is there any doubt that he has resided in the island of Cuba for a considerable number of years, engaged in business transactions, sometimes as a merchant, and sometimes as the conductor of a newspaper press; although the precise period and duration of such residence are not known. On this point, the department has sought in vain for exact information. Mr. Thrasher himself has made no communication to this department, although he has, through the press, addressed a general letter of remonstrance to the government and people of the United States.

In the letter from the Governor of Cuba to her Catholic Majesty's Minister in the United States, already mentioned, it is stated that he has been, not only a resident in Havana for a considerable time, but domiciled there by regular proceedings; and that he has, in solemn form, sworn allegiance to the Spanish crown. There is no evidence in the possession of the government to show what was his purpose with regard to returning to his native country, at any fixed or definite time. Other members of his family are understood to be, like himself, residents in Cuba, his father having gone to that island some years ago.

These are all the known general facts respecting the nature of his residence in Havana, which have come to the knowledge of this department.

It appears that soon after the failure and breaking up of the late expedition of Narcisso Lopez, in the invasion of Cuba by him and the troops under his command, Mr. Thrasher was arrested and tried for high treason or conspiracy against the crown of Spain, condemned to eight years' imprisonment to hard labor, and sent to Spain in execution of that sentence. There is no evidence in the department to show what were the particular acts of treason or conspiracy alleged, or proved, against him. We have only the general statement, although pains has been taken to ascertain particulars.

The first general question, then, is, as to his right to exemption from Spanish law and Spanish authority, on the ground of his being a native-born citizen of the United States.

The general rule of the public law is, that every person of full

age has a right to change his domicile ; and it follows, that when he removes to another place, with an intention to make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicile ; and this is so, notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period. The Supreme Court of the United States has decided, "that a person who removes to a foreign country, settles himself there, and engages in the trade of the country, furnishes by these acts such evidences of an intention permanently to reside in that country, as to stamp him with its national character"; and this undoubtedly is in full accordance with the sentiments of the most eminent writers, as well as with those of other high judicial tribunals, on the subject. No government has carried this general presumption farther than that of the United States, since it is well known that hundreds of thousands of persons are now living in this country who have not been naturalized according to the provisions of law, nor sworn any allegiance to this government, nor been domiciled amongst us by any regular course of proceedings. What degree of alarm would it not give to this vastly numerous class of men, actually living amongst us as inhabitants of the United States, to learn that, by removing to this country, they had not transferred their allegiance from the governments of which they were originally subjects to this government? And, on the other hand, what would be the condition of this country and its government, if the sovereigns of Europe, from whose dominions they have emigrated, were supposed to have still a right to interpose to protect such inhabitants against the penalties which might be justly incurred by them in consequence of their violation of the laws of the United States? In questions on this subject, the chief point to be considered is the *animus manendi*, or intention of continued residence; and this must be decided by reasonable rules and the general principles of evidence. If it sufficiently appear that the intention of removing was to make a permanent settlement, or a settlement for an indefinite time, the right of domicile is acquired by a residence even of a few days.

It is undoubtedly true that an American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act

changing his condition, entitled to the protection of his own government; and if, without the violation of any municipal law, he should be treated unjustly, he would have a right to claim that protection; and the interposition of the American government in his favor would be considered as a justifiable interposition. But his situation is completely changed, when, by his own act, he has made himself the subject of a foreign power. And a person found residing in a foreign country is presumed to be there *animo manendi*, or with the purpose of remaining; and to relieve himself of the character which this presumption fixes upon him, he must show that his residence was only temporary, and accompanied all the while with a fixed and definite intention of returning. If in that country he engages in trade and business, he is considered by the law of nations as a merchant of that country; nor is the presumption rebutted by the residence of his wife and family in the country from which he came. This is the doctrine as laid down by the United States courts. And it has been decided that a Spanish merchant, who came to the United States and continued to reside here and carry on trade after the breaking out of war between Spain and Great Britain, is to be considered an American merchant, although the trade could be lawfully carried on by a Spanish subject only. But the necessity of any presumption in Mr. Thrasher's case is entirely removed, if, in fact, he actually took out letters of domiciliation, in order to enable him to transact business such as a Spanish subject or a domiciliated foreigner can alone transact, and actually swore allegiance to the Spanish crown. For the purpose of showing the mode by which foreigners are domiciled in the island of Cuba, and the duties thereby imposed upon them, and also by what means they obtain the ultimate right of naturalization, I have thought it worth while to quote at length a translation of the royal decree of January 17, 1815, and also the royal colonization decree of October 21, 1817. It is understood that no change has been made, by royal decrees, in the requirements of the Spanish law of domicile and naturalization since the last of those periods.

“ All foreigners belonging to powers and countries that are friendly to me, who may wish to establish themselves, or who may already be established, in the island of Cuba, must produce suitable evidence before

the government of said island that they profess the Roman Catholic religion, and without this indispensable qualification they will not be allowed to become domiciled there; but my vassals in these dominions, and those inhabiting the Indies, need not be compelled to certify to this effect, inasmuch as, in regard to them, there can be no doubt upon this point.

“Those foreigners who shall be admitted conformably to the provisions of the foregoing article, shall take the oath of allegiance and vassalage before the governor, by which they shall promise to obey the general laws and ordinances of the Indies, to which all Spaniards are amenable.

“At the expiration of the first five years of residence in the island, on the part of foreign colonists, and on their contracting then the obligation to remain there perpetually, they shall be allowed all the rights and privileges of naturalization, equally with such children as they may have brought with them, or who may have been born to them in the aforesaid island, in order that the same may consequently be allowed to hold honorable offices, both civil and military, according to the talents of each individual.”

The same decree also provides that “a foreigner may reside in Cuba for the period of three months without letters of domicile,” but that on his remaining there without such letters beyond the time specified, “he becomes guilty of disobedience to the laws, and amenable to such just punishment as, after a close examination of the cause, may be imposed on him.”

Upon the same subject, and in corroboration of the above, the royal colonization decree of October 21, 1817, says:—

“Letters of domicile shall be issued to any foreign colonist who professes the Roman Catholic religion, and takes the oath of allegiance, by means of which, during five years of residence, it shall be optional with him either to return to his own country, or to present himself before the superior magistrate at the expiration of those five years, for the purpose of obtaining his naturalization papers, which will be granted to him without any great formality, in order that, on being thus naturalized, he may enjoy all the rights and privileges appertaining to Spaniards, as well as his sons and legitimate descendants.”

On the 6th of March, 1818, the Governor-General, in view of the above-mentioned royal decree of October 21, 1817, issued a *Bando Real*, in which it is provided, that,

“In the absence of the requisite qualifications in regard to the pro-

fession of the Catholic faith, the fact shall be noted down in the letters of domicile, which will then be issued on probation for the term of two years. If, at the expiration of those two years, the applicant cannot produce satisfactory evidence of his professing our sacred religion, the letter of domicile shall be taken away from him, and he will then be considered in the light of merely a transient foreigner, and, as such, be compelled to leave this island at the expiration of three months, in pursuance of the twenty-eighth article of the royal decree."

But, independently of a residence with intention to continue such residence, independently of any domiciliation, independently of the taking of an oath of allegiance or of renouncing any former allegiance, it is well known that by the public law an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason, or other crimes, as a native-born subject might be, unless his case is varied by some treaty stipulations; but this duty of obedience to the laws, arising from local and temporary allegiance, ceases, of course, the moment he transfers himself back to his original country.

An American citizen by birth, owing of course a native allegiance to the United States, going abroad and obtaining no residence under a foreign government, and professing to such government no allegiance, and who should yet commit acts of hostility or war against this country, would seem to bring himself within the act of Congress which declares that, if any person or persons owing allegiance to the United States of America shall levy war against them, or shall adhere to their enemies, giving them aid and comfort, within the United States or elsewhere, he or they shall be adjudged guilty of treason. And the reason is plain, since his allegiance in such a case is original and native, and has not been transferred, nor lost in any other local allegiance arising from residence elsewhere, but continues to be the primitive tie which binds him to his country.

But, as has been already said, every foreigner born, residing in a country, owes to that country allegiance and obedience to its laws so long as he remains in it, as a duty imposed upon him by the mere fact of his residence, and the temporary protection which he enjoys, and is as much bound to obey its laws as native subjects or citizens. This is the universal understand-

ing in all civilized states, and nowhere a more established doctrine than in this country.

Mr. Jefferson, when Secretary of State, in his letter to Governor Morris of the 16th of August, 1793, speaking of the right of private citizens to make war upon a country with which the government of the United States is at peace, says:—

“If one citizen has a right to go to war of his own authority, every citizen has the same. If every citizen has that right, then the nation (which is composed of all its citizens) has a right to go to war by the authority of its individual citizens. But this is not true, either on the general principles of society, or by our Constitution, which gives that power to Congress alone, and not to the citizens individually. Then the first position was not true; and no citizen has a right to go to war of his own authority; and for what he does without right, he ought to be punished. Indeed, nothing can be more obviously absurd, than to say that all the citizens may be at war, and yet the nation at peace.

“It has been pretended, indeed, that the engagement of a citizen in an enterprise of this nature was a divestment of the character of citizen, and a transfer of jurisdiction over him to another sovereign. Our citizens are certainly free to divest themselves of that character by emigration, and other acts manifesting their intention, and may then become the subjects of another power, and free to do whatever the subjects of that power may do. But the laws do not admit that the bare commission of a crime amounts of itself to a divestment of the character of citizen, and withdraws the criminal from their coercion. They would never prescribe an illegal act among the legal modes by which a citizen might disfranchise himself; nor render treason, for instance, innocent, by giving it the force of a dissolution of the obligation of the criminal to his country.”

This is in accordance with the opinion of the Circuit Court of the United States for Pennsylvania, by whom it was stated, in 1793, that, “if one citizen of the United States may take part in the present war, ten thousand may. If they may take part on one side, they may take part on the other; and thus thousands of our fellow-citizens may associate themselves with different belligerent powers, destroying not only those with whom we have no hostility, but destroying each other. In such a case, can we expect peace among their friends who stay behind? And will not a civil war, with all its lamentable train of evils, be the natural effect?”

Our citizens, who resort to countries where the trial by jury

is not known, and who may there be charged with crime, frequently imagine, when the laws of those countries are administered in the forms customary therein, that they are deprived of rights to which they are entitled, and therefore may expect the interference of their own government. But it must be remembered, in all such cases, that they have of their own free will elected a residence out of their native land, and preferred to live elsewhere, and under another government, and in a country in which different laws prevail.

They have chosen to settle themselves in a country where jury trials are not known; where representative government does not exist; where the privilege of the writ of *habeas corpus* is unheard of; and where judicial proceedings in criminal cases are brief and summary. Having made this election, they must necessarily abide its consequences. No man can carry the ægis of his national American liberty into a foreign country, and expect to hold it up for his exemption from the dominion and authority of the laws and the sovereign power of that country, unless he be authorized to do so by virtue of treaty stipulations.

The definition of crimes, the denouncement of penalties for their commission, and the forms of proceeding by which guilt is to be ascertained, are high prerogatives of sovereignty, and one nation cannot dictate them to another without being liable to the same dictation herself.

The friends of Mr. Thrasher interpose in his behalf the seventh article of the treaty of 1795, which declares that, in all cases of offences committed by any citizen or subject of the one party within the jurisdiction of the other, the same shall be prosecuted by order and authority of law only, and according to the regular course of proceeding in such cases. They shall also be allowed to employ such advocates as they may judge proper before the tribunals of the other party, who shall have free access to be present at the proceedings in such causes, and at the taking of all examinations and evidence which may be exhibited in the said trials.

As the public law, however, does in no case impart to foreigners residing in any country privileges which are denied to its own citizens or subjects, except, perhaps, that of leaving the country, it may be thought doubtful whether, by the arti-

cle of the treaty referred to, the parties could have contemplated any thing more than to place citizens of the United States within Spanish jurisdiction on an equality with Spanish subjects, and Spanish subjects in the United States on an equality with our own citizens, in criminal proceedings. A citizen of Spain in this country might complain, perhaps, of a trial by jury here, because of the supposed partialities and prejudices of juries; while an American in Spain complains of condemnation, in summary form, by judges, without the intervention of a jury to ascertain his guilt. The question arising on the latter clause of this seventh article of the treaty with Spain may not be entirely clear or free from difficulty, especially when it is known that the minister who negotiated this treaty on the part of the United States appears to have attached considerable importance to this right of selecting and employing counsel. Mr. Thomas Pinckney, the American negotiator, says, in a letter on the subject of the treaty, that the first part of this seventh article was taken from the sixteenth article of our treaty with Prussia, and that he added the latter part because he considered it a good stipulation in all situations, but particularly in Spain.

We can readily imagine why it should have been stipulated in the treaty, that the trial of an American citizen in Spain should be open and public, because we know that, as late as the year 1795, there existed in Spain an ecclesiastical jurisdiction, having power over life and death, whose proceedings were always secret. Whether it was intended by the parties that this right of selecting counsel in the case of the arrest or the trial of an American citizen, for treason, or other crime against the civil law, should extend further, or be broader, than in the case of a Spanish subject prosecuted for a similar offence, may be matter of doubt and controversy. The view which the Spanish courts of the highest jurisdiction take of it, may be seen by the communication of the Royal Court of Judicature accompanying the letter of the Governor-General to Mr. Calderon. But, however all this may be, the general question still returns, whether this right secured by treaty, whatever it is, be not justly limited to such persons as are at the time in all respects American citizens, having never vol-



untarily changed their domicile or taken upon themselves a new allegiance.

In this view of the case, it might therefore be asked whether, if Mr. Thrasher had been a native-born subject of her Catholic Majesty, his trial and its result would have been different from what they actually were.

If indeed Mr. Thrasher, in his arrest and trial, did not enjoy the benefits which native-born Spanish subjects enjoy in like cases, but was more harshly treated, or more severely punished, for the reason that he was a native-born citizen of the United States, it would be a clear case of the violation of treaty obligations, and would demand the interposition of the government. There exists in this department no proof of any such extraordinary treatment of Mr. Thrasher. It may have taken place. In the absence of all other information, reference is made on that point, as well as on all the rest of the case, to the letter of the Governor-General of Cuba to Mr. Calderon, her Catholic Majesty's Minister Plenipotentiary to this government.

For the further information of the House of Representatives, I also transmit herewith a copy of the despatch of the 13th instant, from this department to the Minister of the United States at Madrid, and of despatches to the acting consul at Havana of the 12th and 28th of November last.

DANIEL WEBSTER.

TO THE PRESIDENT.

## Miscellaneous Letters



## Miscellaneous Letters

*To the Rev. Louis Dwight, Secretary of the Prison Discipline Society.*

Washington, May 2, 1830

SIR,—I have received your letter of the 19th of April, asking my opinion upon several questions, all relative to the subject of imprisonment for debt. I am quite willing to express my general opinions on that interesting subject, although they are not so matured as to be entitled to influence other men's judgments. The existing laws, I think, call loudly for revision and amendment. Your first four questions seek to know what I think of imprisonment for small sums. I am decidedly against it; I would carry the exemption to debts of thirty or forty dollars, at least. Individual instances of evil or hardship might, I am aware, follow from such a change; but I am persuaded the general result would be favorable, in a high degree, to industry, sobriety, and good morals, as well as to personal liberty.

You ask, in the next place, what I think of imprisonment for debt in any case, where there is no evidence of fraud. Certainly I am of opinion that there should be no imprisonment for debt, where it appears that no fraud has been practised, or intended, either in contracting the debt or in omitting to pay it. But then it seems to me, that, when a man does not fulfil a lawful promise, he ought to show his inability, and to show also that his own conduct has been fair and honest. He ought not to be allowed merely to *say* he cannot pay, and then to call on the creditor to *prove* that his inability is pretended or fraudulent. He ought to show why he does not and cannot fulfil his con-

tract, and to give reasonable evidence that he has not acted fraudulently; and, this being done, his person ought to be held no longer. In the first place, the creditor is entitled to the oath of his debtor, and, in the next place, to satisfactory explanation of any suspicious circumstances.

There are two sorts of fraud, either of which, when proved, ought to prevent a liberation of the person; namely, fraud in contracting the debt, and fraud in concealing, or making way with, the means of payment. And the usual provisions of the bankrupt act ought to be added, that no one should be discharged who is proved to have lost money in any species of gaming; and I should include in this class *all adventurers in lotteries*. Having tendered his own oath, and made just explanation of any circumstances of suspicion, if there be such, and not having lost money by gaming, the debtor ought to be discharged at once; which answers another of your questions; for the detention of thirty days before the oath can be taken appears to me wholly useless.

You are pleased to ask, whether, in my judgment, Christians can, with a good conscience, imprison, either other Christians, or infidels. He would be very little of a Christian, I think, who should make a difference, in such a case, and be willing to use a degree of severity towards Jew or Greek which he would not use towards one of his own faith. Whether conscientious men can imprison any body for debt, whom they do not believe dishonest or fraudulent, is a question which every man, while the law allows such imprisonment, must decide for himself. In answer to your inquiry, whether I have found it necessary to use such coercion in regard to debts of my own, I have to say, that I never imprisoned any man for my own debt, under any circumstances; nor have I, in five-and-twenty years' professional practice, ever recommended it to others, except in cases where there was manifest proof, or violent and unexplained suspicion, of intentional fraud.

Imprisonment for debt, my dear Sir, as it is now practised, is, in my judgment, a great evil; and, it seems to me, an effectual remedy for the larger part of the evil is obvious. Nineteen twentieths of the whole of it would be relieved, in my opinion, if imprisonment for *small debts* were to be abolished. That object I believe to be attainable; and to its attainment, I think,

the main attention of those who take an interest in the subject should be directed. Small credits are often given, on the confidence of being able to collect the debt by the terrors of the jail; great ones, seldom or never.

Three simple provisions would accomplish all, in my opinion, that may be considered as absolutely required to a just state of the law respecting imprisonment for debt in Massachusetts:—

1. That no imprisonment should be allowed, when the debt, exclusive of costs, did not amount to thirty dollars.

2. That there should be no necessity of imprisonment for thirty days, as preliminary to taking the poor debtor's oath; nor any longer detention than such as is necessary to give parties notice, and time to prepare for examination; and that a convenient number of magistrates in every county should, for the purpose of administering the oath, be appointed by the government; and that such magistrates should be clothed with such further powers as might be thought expedient, in order to enable them to make a thorough investigation of the fairness or fraud of the debtor's conduct.

3. That, in cases where the debtor had been discharged, if the creditor would make oath to newly discovered evidence, proving original fraud, or to his belief that the debtor had subsequently received property, and concealed or withheld the same from his creditors, it should be competent to such creditor to have investigation of such charge, and, if made out, to have execution against the person, and if not made out, that the creditor should pay the cost of the proceeding.

Other provisions might doubtless be useful; but if these three alone could be obtained, they would, in a great measure, clear the jails of debtors, and give general satisfaction, I have no doubt, to creditors.

I ought to add, that the imprisonment of females in the common jails, for mere debt, is a barbarism which ought not to be tolerated. Instances of such imprisonment, though rare, do yet sometimes occur, under circumstances that shock every humane mind. In this respect, the law ought, in my judgment, to be altogether reformed.

*To John Bolton, Esq., of Georgia.*

New York, May 17, 1833.

MY DEAR SIR,—I have received your letter of last evening, requesting me to state my opinion of the powers of Congress on the subject of slaves and slavery; and of the existence of any wish or design, on the part of Northern men, to interfere with the security or regulation of that species of property.

My sentiments on this subject, my dear Sir, have been often publicly expressed; but I can have no objection to repeat the declaration of them, if it be thought by you that such a declaration might, in the smallest degree, aid the friends of the Union and the Constitution, in the South, in dispelling prejudices which are so industriously fostered, and in quieting agitations so unnecessarily kept alive.

In my opinion, the domestic slavery of the Southern States is a subject within the exclusive control of the States themselves; and this, I am sure, is the opinion of the whole North. Congress has no authority to interfere in the emancipation of slaves, or in the treatment of them in any of the States. This was so resolved in the House of Representatives, when Congress sat in this city in 1790, on the report of a committee consisting almost entirely of Northern members; and I do not know an instance of the expression of a different opinion, in either house of Congress, since. I cannot say that particular individuals might not possibly be found who suppose that Congress may possess some power over the subject, but I do not know any such persons, and if there be any, I am sure they are few. The servitude of so great a portion of the population of the South is undoubtedly regarded at the North as a great evil, moral and political; and the discussions upon it which have recently taken place in the legislatures of several of the slaveholding States have been read with very deep interest. But it is regarded, nevertheless, as an evil, the remedy for which lies with those legislatures themselves, to be provided and applied according to their own sense of policy and duty. The imputations which you say, and say truly, are constantly made against the North, are, in my opinion, entirely destitute of any just foundation. I have endeavored to repel them, so far as has been in my power, on all proper occasions; and for a fuller ex-

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pression of my own opinions, both on the power of Congress and on the groundless charges against Northern men, I beg leave to refer you to my remarks in the debate on Mr. Foot's resolutions, in 1830.

I am, my dear Sir, with much true regard, your obedient servant,

DANIEL WEBSTER.

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*To Messrs. Baring Brothers & Co.*

London, October 16, 1839.

GENTLEMEN, — I have received your letter, and lose no time in giving you my opinion on the question which you have submitted for my consideration. The assertion and suggestions to which you refer, as having appeared in some of the public prints, had not escaped my notice.

Your first inquiry is, "whether the legislature of one of the States had legal and constitutional power to contract loans at home and abroad." To this I answer, that the legislature of a State has such power; and how any doubt could have arisen on this point it is difficult for me to conceive.

Every State is an independent, sovereign, political community, except in so far as certain powers, which it might otherwise have exercised, have been conferred on a general government, established under a written constitution, and exercising its authority over the people of all the States. This general government is a limited government. Its powers are specific and enumerated. All powers not conferred on it still remain with the States or with the people. The State legislatures, on the other hand, possess all usual and ordinary powers of government, subject to any limitations which may be imposed by their own constitutions, and with the exception, as I have said, of the operation on those powers of the Constitution of the United States.

The powers conferred on the general government cannot, of course, be exercised by any individual State; nor can any State pass any law which is prohibited by the Constitution of the United States.



Thus no State can by itself make war, or conclude peace, or enter into alliances or treaties with foreign nations. In these, and in other important particulars, the powers which would have otherwise belonged to the State can now be exercised only by the general government, or the government of the United States. Nor can a State pass a law which is prohibited by its own constitution. But there is no provision in the Constitution of the United States, nor, so far as I know or have understood, in any State constitution, prohibiting the legislature of a State from contracting debts, or making loans either at home or abroad. Every State has the power of levying and collecting taxes, direct and indirect, of all kinds, except that no State can impose duties on goods and merchandise imported, that power belonging exclusively to Congress by the Constitution. That power of taxation is exercised by every State, habitually and constantly, according to its own discretion and the exigencies of its own government.

This is the general theory of that mixed system of government which prevails in America. And as the Constitution of the United States contains no prohibition or restraint on State legislatures in regard to making loans, and as no State constitution, so far as known to me, contains any such prohibition, it is clear that, in this respect, those legislatures are left in the full possession of this power, as an ordinary and usual power of government. I have seen a suggestion, that State loans must be regarded as unconstitutional and illegal, inasmuch as the Constitution of the United States has declared that no State shall emit bills of credit. It is certain that the Constitution of the United States does contain this salutary prohibition; but what is a bill of credit? It has no resemblance whatever to a bond, or other security given for the payment of money borrowed. The term *bill of credit* is familiar in our political history, and its meaning is well ascertained and settled, not only by that history, but by judicial interpretations and decisions from the highest sources.

For the purpose of this opinion, it may be sufficient to say, that bills of credit, the subject of the prohibition in the Constitution of the United States, were essentially paper money. They were paper issues, intended for circulation and for receipt into the treasury as cash, and were sometimes made a tender in pay-

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ment for debts. To put an end at once and for ever to evils of this sort, and to dangers from this source, the Constitution of the United States has declared, that no State shall emit bills of credit, nor make any thing but gold and silver a tender in payment of debts, nor pass any law which shall impair the obligation of contracts. All this, however, proves, not that States cannot contract debts, but that, when contracted, they must pay them in coin, according to their stipulation. The several States possess the power of borrowing money for their own internal occasions of expenditure, as fully as Congress possesses the power to borrow in behalf of the United States, for the purpose of raising armies, equipping navies, or performing any other of its constitutional duties. It may be added, that Congress itself fully recognizes this power in the States, as it has authorized the investment of large funds, which it held in trust for very important purposes, in certificates of State stocks. The security for State loans is the plighted faith of the State, as a political community. It rests on the same basis as other contracts with established governments, the same basis, for example, as loans made by the United States, under the authority of Congress; that is to say, the good faith of the government making the loan, and its ability to fulfil its engagements. The State loans, it is known, have been contracted principally for the purpose of making railroads and canals; and in some cases, although I know not how generally, the income or revenue expected to be derived from these works is directly and specifically pledged, and in others very valuable tracts of land. It cannot be doubted that the general result of these works of internal improvement has been, and will be, to enhance the wealth and ability of the States.

It has been said, that the States cannot be sued on these bonds. But neither could the United States be sued, nor, as I suppose, the crown of England, in a like case. Nor would the power of suing give to the creditors, probably, any substantial additional security. The solemn obligation of a government, arising on its own acknowledged bond, would not be enhanced by a judgment rendered on such bond. If it either could not or would not make provision for paying the bond, it is not probable that it could or would make provision for satisfying the judgment.

The States cannot rid themselves of their obligations otherwise than by the honest payment of the debt. They can pass no law impairing the obligation of their own contracts. They can make nothing a tender, in discharge of such contracts, but gold and silver. They possess all adequate power of providing for the case, by taxes and internal means of revenue. They cannot get round their duty, nor evade its force. Any failure to fulfil its undertakings would be an open violation of public faith, to be followed by the penalty of dishonor and disgrace; a penalty, it may be presumed, which no State of the American Union would be likely to incur.

I hope I may be justified by existing circumstances in closing this letter with the expression of an opinion of a more general nature. It is, that I believe the citizens of the United States, like all honest men, regard debts, whether public or private, and whether existing at home or abroad, to be of moral as well as legal obligation; and I trust I may appeal to their history, from the moment when those States took their rank among the nations of the earth to the present time, for proof that this belief is well founded. If it were possible that any one of the States should at any time so entirely lose her self-respect, and forget her duty, as to violate the faith solemnly pledged for her pecuniary engagements, I believe there is no country upon earth, not even that of the injured creditor, in which such a proceeding would meet with less countenance or indulgence than it would receive from the great mass of the American people.

I have the honor to be, Gentlemen, your obedient servant,  
DANIEL WEBSTER.

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*To the Duke of Rutland.*

London, November 16, 1839.

MY DEAR DUKE,—I am obliged to you for the respectful manner in which, presiding at the meeting of the Waltham Agricultural Association, you were pleased to refer to our conversation at Belvoir, and I have still higher pleasure in noticing the just and liberal sentiments expressed by you on that occasion respecting the relations of our respective countries. Such

sentiments, I assure you, will be heartily reciprocated on our side of the Atlantic. England and the United States are not only the two most commercial countries in the world, but they are also those two which have the greatest degree of intercourse with each other. This will strike any one who shall compare the small amount of annual trade between England and France with the great amount of that between England and the United States, and yet France is within sight of England, with thirty-three or thirty-four millions of people, and the United States are three thousand miles off, with half that amount of population; and, notwithstanding the progress which may be expected in some branches of manufactures in America, there is no reason to doubt that this intercourse will continue, and perhaps be increased by the rapid increase of population in America. While the United States continue to import British commodities, it is evidently the interest of England that her customers should increase both in numbers and in the ability to buy and consume her products. On the other hand, every intelligent person in America sees, not only the evils which would ensue from any interruption of the harmony existing between the two countries, but the embarrassments, also, which must be felt in America, whenever any disasters occur sufficient to derange the general prosperous course of trade and business in England.

The intimate relations of commerce subsisting between the two countries, the well-known laws of trade and exchange, and the important fact that both countries use, to a great extent, a representative paper currency, necessarily cause any great embarrassment which may be felt in one to be extended to the other. Your Grace was quite right, I think, in your observations on the subject of corn. America is indebted to England in various ways, and is likely to remain so, while the interest of money remains much lower in the latter country than in the former. We have this year a most abundant wheat crop; and if England should have occasion to import corn or flour, both countries would be benefited by her taking her supply from us. We should be paying so much of our debt, and she would be receiving her supply without the necessity of sending abroad specie; and it is undoubtedly true that the short crop in England last year, leading to so heavy an export of gold and silver

to the Continent, most seriously affected commercial business in the United States, as well as in England.

Let us hope, my dear Duke, that between two Christian nations speaking the same language, having the same origin, enjoying the same literature, and connected by these mutual ties of interest, nothing may ever exist but peace and harmony, and the noble rivalry of accomplishing most for the general improvement and happiness of mankind.

Allow me to close this letter with an invitation, which, if given some years ago, would have passed for mere compliment; and that is, that you will come and see us. You are fond of excursions by sea. Eighteen or twenty days will take you from Belvoir Castle to the Falls of Niagara, and you may see much of America this side of the Alleghanies, and something of what is beyond, and return to England in a period hardly longer than an ordinary recess of Parliament. Nature has done much in America which is worthy to attract your notice. Man, I hope, has done something; and at any rate, you and your connections and friends would be sure of receiving that respectful and hearty welcome to which your character and your hospitality to others so well entitle you.

I have the honor to be, my dear Duke, very faithfully yours,  
DANIEL WEBSTER.

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*To M. St. Clair Clarke, Wm. S. Murphy, and Hudson M. Garland*

Department of State, March 27, 1841.

GENTLEMEN,—It is the desire of the President to be fully acquainted with the state of progress in which the public works now are, and with the degree of skill, fidelity, and economy with which these works are carried on. For this purpose he has appointed you a commission of examination and inquiry, and he wishes you to direct your attention to the following points:—

1st. What is the number of persons employed on the public buildings now in progress in the city, exclusive of laborers? This is the more necessary, as many of those persons hold offices not created by specific provisions of law.

2d. What is the respective duty of each of these persons?

3d. What prices are paid to them for their services, and whether in any case the compensation is unreasonably large.

4th. Whether there has been, or is, any just ground of complaint against those persons, or any of them, either in regard to their own diligence and skill, or in regard to their treatment of laborers employed by them.

If you have any reason to suppose that any one has been guilty of misconduct, you will state the charge to him, and give him an opportunity to answer it; and will report no evidence of which the party shall not have had notice. You will inquire into no man's political opinions or preferences; but if it be alleged that any person, having the power of employing and dismissing laborers, has used that power either in employing or dismissing with any reference to the political opinions of those who may have been employed or dismissed, or for any political or party object whatever, or in any other way violated his duty for party or electioneering purposes, you will inquire into the truth of such suggestion; and if you find reason to think it well founded, in any case, you will state the particular facts or circumstances on which your opinion is founded. It is not intended that this commission shall be of long continuance, nor be attended with any considerable expense. You will use as much despatch, therefore, as the nature of the case will allow, and make report to this department.

A reasonable sum will be allowed you for your time and service, out of the appropriated fund.

By the President's order.

DANIEL WEBSTER, *Secretary of State.*

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*To Messrs. John Haven and others.*

Washington, January 3, 1844.

GENTLEMEN,— I have received your letter requesting permission to present my name to the people as a candidate for the office of President of the United States, subject to the future wise, deliberate action of the Whig National Convention of 1844.

It would be disingenuous to withhold an expression of the

grateful feelings awakened by a letter, containing such a request, so very numerously signed, and coming from among those who have known me through life. No one can be insensible to the distinction of being regarded by any respectable number of his fellow-citizens as among those from whom a choice of President might be made with honor and safety to the country. The office of President is an office, the importance of which cannot be too highly estimated. He who fills it necessarily exercises a great influence, not only on all the domestic interests of the country, on its foreign relations, and the support of its honor and character among the nations of the earth, but on that which is of the very highest import to the happiness of the people, the maintenance of the Constitution itself, and the prosperous continuance of the government under it.

Our systems are peculiar; and while capable, as experience has shown, of producing the most favorable results, under a wise and cautious administration, they are, nevertheless, exposed to peculiar dangers.

We have six-and-twenty States, each possessing within itself powers of government, limited only by the Constitution of the United States; and we have a general government, to which are confided high trusts, to be exercised for the benefit of the people of all the States. It is obvious that this division of powers, itself the result of a novel and most delicate political operation, can be preserved only by the exercise of wisdom and pure patriotism. The Constitution of the United States stands on the basis of the people's choice. It must remain on that basis so long as it remains at all. The veneration and love which are entertained for it will be increased by every instance of wise, prudent, impartial, and parental administration.

On the other hand, they will be diminished by every administration which shall cherish local divisions, devote itself to local interests, seek to bend the influence of the government to personal or partisan purposes, or which shall forget that all patriotism is false and spurious which does not look with equal eye to the interests of the whole country, and all its parts, present and to come. I hardly know what an American statesman should so much deprecate, on his own account, as well as on account of his country, as that the Constitution of the United States,

now the glory of our country and the admiration of the world, should become weakened in its foundations, perverted in its principles, or fallen and sunk in a nation's regard and a nation's hopes, by his own follies, errors, or mistakes. The Constitution was made for the good of the country; this the people know. Its faithful administration promotes that good; this the people know. The people will themselves defend it against all foreign powers, and all open force, and they will rightfully hold to a just and solemn account those to whom they may commit it, and in whose hands it shall be found to be shorn of a single beam of its honor, or deprived of a particle of its capacity for usefulness. It was made for an honest people, and they expect it to be honestly administered. At the present moment, it is an object of general respect, confidence, and affection. Questions have arisen, however, and are likely to arise again, upon the extent of its powers, or upon the line which separates the functions of the general government from those of the State governments; and these questions will require, whenever they may occur, not only firmness, but much discretion, prudence, and impartiality, at the hand of the national executive. Extreme counsels or extreme opinions on either side would be very likely, if followed or adopted, to break up the well-adjusted balance of the whole. And he who has the greatest confidence in his own judgment, or the strongest reliance on his own good fortune, may yet be well diffident of his ability to discharge the duties of his trust in such a manner as shall prevent the public prosperity, or advance his own reputation.

But, Gentlemen, while the office of President is quite too high to be sought by personal solicitation, or for private ends and objects, it is not to be declined, if proffered by the voluntary desire of a free people.

It is now more than thirty years since you and your fellow-citizens of New Hampshire assigned me a part in political affairs. My public conduct since that period is known. My opinions on the great questions now most interesting to the country are well known. The constitutional principles which I have endeavored to maintain are also known. If these principles and these opinions, now not likely to be materially changed, should recommend me to further marks of public re-



gard and confidence, I should not withhold myself from compliance with the general will.

But I have no pretensions of my own to bring forward, and trust that no friends of mine would, at any time, use my name for the purpose of preventing harmony among those whose general political opinions concur, or for any cause whatever but a conscientious regard to the good of the country. It is obvious, Gentlemen, that, at the present moment, the tendency of opinion among those to be represented in the convention is generally and strongly set in another direction. I think it my duty, therefore, under existing circumstances, to request those who may feel a preference for me not to indulge in that preference, nor oppose any obstacle to the leading wishes of political friends, or to united and cordial efforts for the accomplishment of those wishes.

The election of the next autumn must involve, in general, the same principles, and the same questions, that belonged to that of 1840. The cause I conceive to be the true cause of the country, its permanent prosperity, and all its great interests; the cause of its peace and honor; the cause of good government, true liberty, and the preservation and integrity of the Constitution; and none should despair of its success.

I am, Gentlemen, with sentiments of sincere regard, your obliged and obedient servant,

DANIEL WEBSTER.

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*To the Hon. Thomas H. Perkins and others, Citizens of Boston.*

Washington, April 9, 1850.

GENTLEMEN, — It would be in vain that I should attempt to express the gratification which I have derived from your letter of the 25th ultimo. That gratification arises not only from its manifestation of personal regard and confidence, but especially from the evidence which it affords that my public conduct, in regard to important pending questions, is not altogether disapproved by the people of Massachusetts. Such a letter, with such names, assures me that I have not erred in judging of the causes of existing discontents, or their proper remedy, and encourages me to persevere in that course which my deepest con-

victions of duty have led me to adopt. The country needs pacification; it needs the restoration of mutual respect and harmony between the people in one part of the Union and those in another. And, in my judgment, there is no sufficient cause for the continuance of the existing alienation between the North and the South. If we will look at things justly and calmly, there are no essential differences, either of interest or opinion, which are irreconcilable or incapable of adjustment. So far as the question of slavery or no slavery applies to the newly acquired territories, there is, in my judgment, no real and practical point of importance in dispute. There is not, and there cannot be, slavery, as I firmly believe, either in California, New Mexico, or Utah. And, if this be so, why continue the controversy on a mere abstraction?

The other disturbing questions respect the restoration of fugitive slaves, and slavery in the District of Columbia; and I know no reason why just and fair measures, all within the undoubted limits and requisitions of the Constitution, might not be adopted, which should give, on these subjects, general satisfaction. At any rate, we should make the attempt, because, so long as these dissensions continue, they embarrass the government, interrupt the quiet of the people and alarm their fears, and render it highly improbable that important acts of legislation, affecting great objects, and in which the whole country is deeply interested, can be accomplished. Indeed, the ordinary operations, essential to the existence of the government and its daily administration, meet with checks and hinderances hitherto altogether unprecedented. We must return to our old feelings of conciliation and regard; we must refresh ourselves at those pure fountains of mutual esteem, common patriotism, and fraternal confidence, whose beneficent and healing waters so copiously overflowed the land through the struggle of the Revolution, and in the early years of the government. The day has come when we should open our ears and our hearts to the advice of the great Father of his Country. "It is of infinite moment," said he, "that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity;

watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts."

Notwithstanding what may occasionally appear on the surface, the American mind is deeply imbued with the spirit of this advice. The people, when serious danger threatens, will, in my opinion, stand fast by their government. They will suffer no impairing of its foundation, no overthrow of its columns, no disorganization of its structure. The Union and the Constitution are to stand, and what we have to do is so to administer the government that all men shall be made more and more sensible of its beneficent operations and its inestimable value.

It is not inappropriate that I should accompany this answer to your letter by the copy of a recent correspondence between the Hon. Hugh N. Smith, Delegate from New Mexico, now in this city, and myself.

I have the honor to be, Gentlemen, with profound regard, your obliged fellow-citizen, and obedient, humble servant,

DANIEL WEBSTER.

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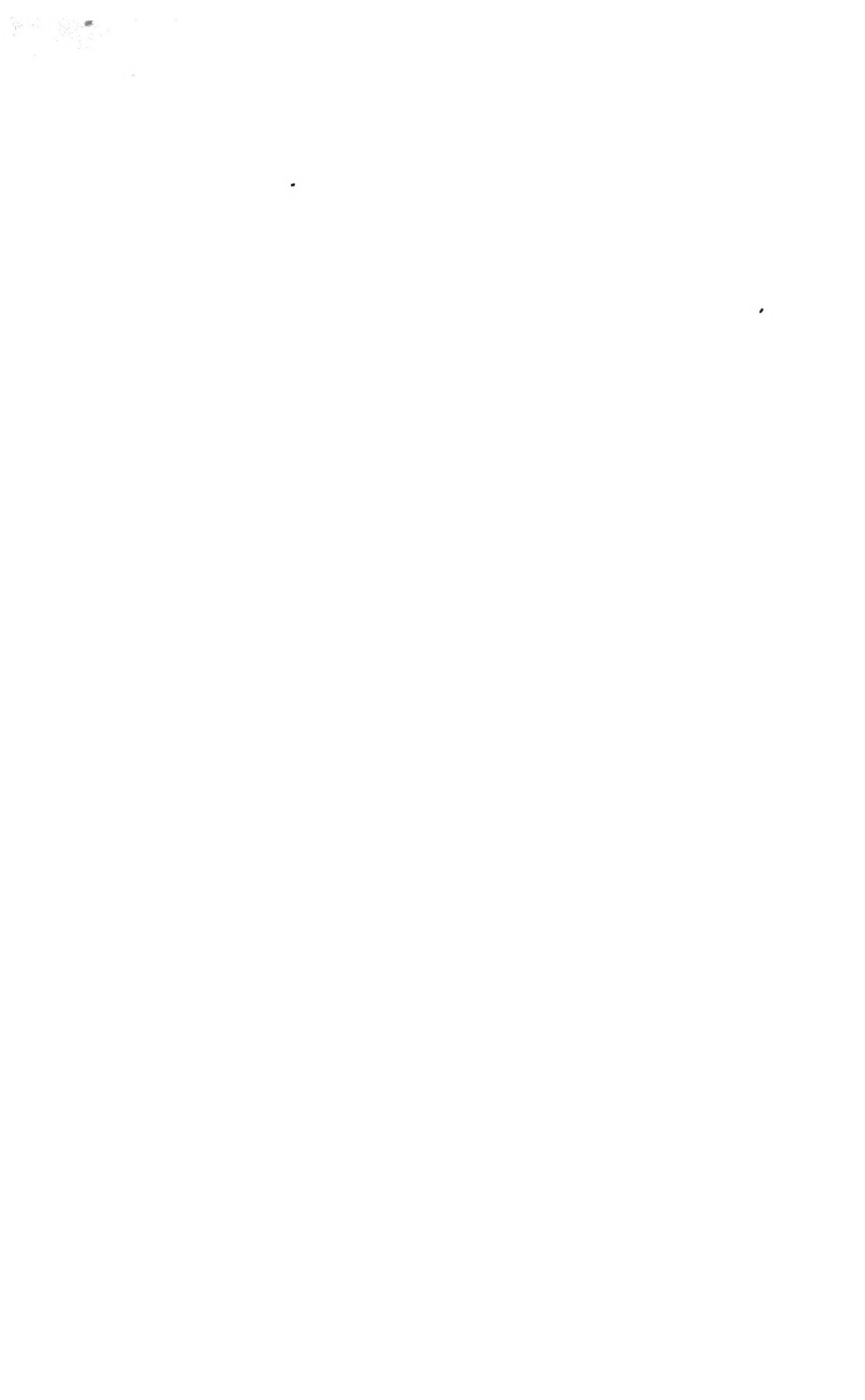
*To the Hon. Hugh N. Smith, Delegate from New Mexico.*

Washington, April 8, 1850.

DEAR SIR,—I beg leave to present you with a copy of my speech delivered in the Senate on the 7th of March last, and to draw your attention to the remarks made by me on that occasion upon the general character of the country of New Mexico, and its adaptation to slave labor. You have been a resident in the country for several years, and, as I have understood you to say, have traversed it from end to end. You are a native of one of the slave States of this Union, and of course acquainted with the usual cost of slave labor, and the modes of cultivation to which it may be properly applied. You are, therefore, I am sure, quite competent to express an opinion entitled to respect on the points that I have suggested.

*George Washington*

Engraved by A. B. Durand from the Bust by Houdon













I will be obliged to you also to state what the fact is, at the present time, respecting the existence of slavery in New Mexico, and whether the existing laws and constitution of the country allow it.

I have the honor to be, my dear Sir, your obedient servant,  
DANIEL WEBSTER.

*To the Hon. Daniel Webster.*

Washington, April 9, 1850.

DEAR SIR, — I have the honor to acknowledge the receipt of your letter of the 8th instant, and reply to it with great pleasure. New Mexico is an exceedingly mountainous country, Santa Fé itself being twice as high as the highest point of the Alleghanies, and nearly all the land capable of cultivation is of equal height, though some of the valleys have less altitude above the sea. The country is cold. Its general agricultural products are wheat and corn, and such vegetables as grow in the Northern States of this Union. It is entirely unsuited for slave labor. Labor is exceedingly abundant and cheap. It may be hired for three or four dollars a month, in quantity quite sufficient for carrying on all the agriculture of the territory. There is no cultivation except by irrigation, and there is not a sufficiency of water to irrigate all the land.

As to the existence at present of slavery in New Mexico, it is the general understanding that it has been altogether abolished by the laws of Mexico; but we have no established tribunals which have pronounced as yet what the law of the land in this respect is. It is universally considered, however, that the territory is altogether a free territory. I know of no persons in the country who are treated as slaves, except such as may be servants to gentlemen visiting or passing through the country. I may add, that the strongest feeling against slavery universally prevails throughout the whole territory, and I suppose it quite impossible to convey it there, and maintain it by any means whatever.

I have the honor to be, with regard, your obedient servant,  
HUGH N. SMITH.

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*To Hon. Isaac Hill.*

Washington, April 20, 1850.

DEAR SIR, — I regard such a letter from you as that of the 17th of this month as an extraordinary and gratifying incident in my life. For a long course of years, we have belonged to opposing parties, espoused opposite measures, and supported for high office men of very different political opinions.

We have not, however, taken different views of duty in respect to the maintenance of the Constitution of the United States. From your voice, or your pen, any more than from mine, there never has proceeded a sentiment hostile to "that UNITY of government which constitutes us one people."

And now, when we are no longer young, a state of things has arisen seriously interrupting the harmony and good-will which have hitherto existed between different parts of the country, exciting violent local animosities, impeding the regular and ordinary progress of the government, and fraught with mischiefs of every description. And all this has its origin in certain branches of the Slavery question, which, as it appears to me, are either quite unimportant in themselves, or clearly settled and determined by the Constitution.

All this I have seen with that keen regret which you have experienced yourself, and which cannot but be a common feeling with all reflecting men who are lovers of their country.

To this unhappy state of the public mind I have felt it my duty to address myself, not in language of irritation, crimination, or menace, but in words of peace, patriotic sympathy, and fraternal regard. My effort has been, and will be, to the full extent of my power, to cause the billows of useless and dangerous domestic controversy to sleep, and be still.

I am as fully aware as other men of what is to be expected from such attempts. In highly excited times it is far easier to fan and feed the flames of passion and discord, than to subdue them; and in such times he who counsels moderation is in danger of being regarded as failing in his duty to party.

These consequences I willingly meet, these dangers I encounter without hesitation; being resolved to throw myself, with whatever weight may belong to me, unreservedly into the scale of UNION. Where Washington led, I am willing to follow, at

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a vast distance, indeed, and with unequal, but no faltering steps.

The speech which you commend so much above its merits, I submit to the political party to which I belong, and to the wise and patriotic men of all parties, in the generation in which I live; and I cheerfully leave it, with the principles and sentiments which it avows, to the judgment of posterity, if I may flatter myself that any thing spoken or written by me will be remembered long enough to come before that impartial and august tribunal.

I am, with great regard, your obedient servant,

DANIEL WEBSTER.

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*To Edward S. Rand and others, Citizens of Newburyport, Mass.*

Washington, May 15, 1850.

GENTLEMEN, — I have the honor to acknowledge the receipt of your letter of the 8th of April, approving the sentiments of my speech delivered in the Senate on the 7th of March last. As considerable differences of opinion prevail, in Massachusetts, on the subject of that speech, it is grateful to receive, in a letter so respectably and numerously signed, opinions so decidedly concurring with my own.

Circumstances have occurred, within the last twenty years, to create a new degree of feeling, at the North, on the subject of slavery; and from being considered, as it was at the adoption of the Constitution, mainly as a political question, it has come to be regarded, with unusual warmth, as a question of religion and humanity.

It is obvious enough, that the government of the United States has no control over slavery, as it exists in the several States. Its proper jurisdiction, in this respect, is confined to its own territories, except so far as it is its duty to see that that part of the Constitution which respects the surrender of fugitive slaves be carried fairly and honestly into execution.

The Constitution of the United States, in the second section of the fourth article, declares: —

“ A person charged in any State with treason, felony, or other crime,

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who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

“No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.”

This provision of the Constitution seems to have met with little exception or opposition, or none at all, so far as I know, in Massachusetts. Every body seems to have regarded it as necessary and proper. The members of the convention of that State for adopting the Constitution were particularly jealous of every article and section which might in any degree intrench on personal liberty. Every page of their debates evinces this spirit. And yet I do not remember that any one of them found the least fault with this provision. The opponents and deriders of the Constitution, of this day, have sharper eyes in discerning dangers to liberty than General Thompson, Holder Slocum, and Major Nason had, in 1788; to say nothing of John Hancock, Samuel Adams, and others, friends of the Constitution, and among them the very eminent men who were delegates in that convention from Newburyport: Rufus King, Benjamin Greenleaf, Theophilus Parsons, and Jonathan Titcomb.

The latter clause, quoted above, it may be worth while to remark, was borrowed, in substance, from the celebrated Ordinance of 1787, which was drawn up by that great man of your own county, and a contemporary of your fathers, Nathan Dane.

Mr. Dane had very venerable New England authority for the insertion of this provision in the Ordinance which he prepared. In the year 1643, there was formed a confederation between the four New England Colonies, Massachusetts Bay, Plymouth, Connecticut, and New Haven; and in the eighth article of that confederation it is stipulated as follows: “It is also agreed, if any servant run away from his master into any other of these confederated jurisdictions, that, in such cases, upon the certificate of one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof, the said servant

shall be delivered, either to his master, or any other that pursues, and brings such certificate or proof." And in the "Articles of Agreement," entered into in 1650, between the New England Colonies and "the delegates of Peter Stuyvesant, Governor of New Netherland," it was stipulated that "the same way and course" concerning fugitives should be observed between the English Colonies and New Netherland, as had been established in the "Articles of Confederation" between the English Colonies themselves.

On the 12th of February, 1793, under the administration of General Washington, Congress passed an act for carrying into effect both these clauses of the Constitution. It is entitled, "An Act respecting fugitives from justice, and persons escaping from the service of their masters."

The first two sections of this law provide for the case of fugitives from justice; and they declare, that whenever the executive authority of any State or Territory shall demand any person, as a fugitive from justice, of the executive authority of any State or Territory to which such person shall have fled, and shall produce the copy of an indictment, or an affidavit made before a magistrate, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory whence the person so charged fled, it shall be the duty of the executive authority of the State or Territory to which such person shall have fled, to cause him or her to be arrested or secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear; but if no such agent shall appear within six months, the prisoner may be discharged; and all costs or expenses incurred by arresting, securing, or transmitting the fugitive shall be paid by the State or Territory making the demand; and that any agent who shall receive such fugitive into his custody shall be authorized to transport him to the State or Territory from which he fled; and any person rescuing or setting such person at liberty shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

The last two sections of the act respect persons held to labor

in any of the United States or Territories, escaping into any other State or Territory; and are in these words:—

“SECT. 3. *And be it further enacted*, That when a person held to labor in any of the United States, or in either of the Territories on the north-west or south of the River Ohio, under the laws thereof shall escape into any other of the said States or Territories, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the Circuit or District Courts of the United States, residing or being within the State, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made; and upon proof, to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such State or Territory, that the person so seized or arrested doth, under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the State or Territory from which he or she fled.

“SECT. 4. *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested pursuant to the authority herein given or declared, or shall harbor or conceal such person, after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars; which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover, to the person claiming such labor or service, his right of action for, or on account of, the said injuries, or either of them.”

It will be observed, that in neither of the two cases does the law provide for the trial of any question whatever by jury, in the State in which the arrest is made. The fugitive from justice is to be delivered, on the production of an indictment, or a regular affidavit, charging the party with having committed the crime; and the fugitive from service is to be removed to the State from which he fled, upon proof, before any authorized magistrate, in the State where he may be found, either by witnesses or affidavit, that the person claimed doth owe service to

the party claiming him, under the laws of the State from which he fled. In both cases, the proceeding is to be preliminary and summary; in both cases, the party is to be removed to the State from which he fled, that his liabilities, and his rights, may be there regularly tried and adjudged by the tribunals of that State, according to its laws. In the case of an alleged fugitive from justice, charged with crime, it is not to be taken for granted, in the State to which he has fled, that he is guilty; nor in that State is he to be tried, or punished. He is only to be remitted for trial to the place from which he came. In the case of the alleged fugitive from service, the courts of the State in which he is arrested are not to decide that, in fact or in law, he does owe service to any body. He, too, is only to be remitted, for an inquiry into his rights and the proper adjudication of them, to the State from which he fled; the tribunals of which understand its laws, and are in the constant habit of trying the question of slavery or no slavery, on the application of individuals, as an ordinary act of judicial authority. There is not a slave State in the Union, in which independent judicial tribunals are not always open to receive and decide upon petitions, or applications for freedom; nor do I know, nor have I heard it alleged, that the decisions of these tribunals are not fair and upright. Such of them as I have seen evince, certainly, these qualities in the judges.

This act of Congress of the 12th of February, 1793, appears to have been well considered, and to have passed with little opposition. There is no evidence known to me that any body at the time regarded any of its provisions as repugnant to religion, liberty, the Constitution, or humanity. The two Senators of Massachusetts at that time were that distinguished legislator and patriot of your own county, George Cabot; and that other citizen of Massachusetts, among the most eminent of his day for talent, purity of character, and every virtue, Caleb Strong. Mr. Cabot, indeed, was one of the committee for preparing the bill. It appears to have passed the Senate without a division. In the House of Representatives it was supported by Mr. Goodhue, Mr. Gerry, both then, I believe, of your county of Essex, (Mr. Goodhue afterwards a Senator of the United States, and Mr. Gerry afterwards Vice-President of the United States,) Mr. Ames, Mr. Bourne, Mr. Leonard, and Mr. Sedgwick, members



from Massachusetts, and was passed by a vote of *forty-eight to seven*; of these seven, one being from Virginia, one from Maryland, one from New York, and four from the New England States; and of these four, one, Mr. Thatcher, from Massachusetts.

I am not aware that there exists any published account of the debates on the passage of this act. I have been able to find none. I have searched the original files, however, and I find among the papers several propositions for modifications and amendments, of various kinds; but none suggesting the propriety of any jury trial in the State where the party should be arrested.

For many years, little or no complaint was made against this law, nor was it supposed to be guilty of the offences and enormities which have since been charged upon it. It was passed for the purpose of complying with a direct and solemn injunction of the Constitution; it did no more than was believed to be necessary to accomplish that single purpose; and it did that in a cautious, mild manner, to be everywhere conducted according to judicial proceedings.

I confess I see no more objection to the provisions of this law than was seen by Mr. Cabot and Mr. Strong, Mr. Goodhue and Mr. Gerry; and such provisions appear to me, as they appeared to them, to be absolutely necessary, if we mean to fulfil the duties positively and peremptorily enjoined upon us by the Constitution of the country. But since the agitation caused by Abolition societies and Abolition presses has to such an extent excited the public mind, these provisions have been rendered obnoxious and odious. Unwearied endeavors have been made, and but too successfully, to rouse the passions of the people against them; and under the cry of universal freedom, and under that other cry, that there is a rule for the government of public men and private men which is of superior obligation to the Constitution of the country, several of the States have enacted laws to hinder, obstruct, and defeat the enactments in this act of Congress, to the utmost of their power. The Supreme Court of the United States has solemnly decided, that it is lawful for State officers and State magistrates to fulfil the duties enjoined upon them by the act of Congress of 1793, unless prohibited by State laws; and thereupon prohibitory State

laws have been immediately passed, inflicting fine and imprisonment on all State officers and magistrates who shall presume to conform to these requisitions of the act of Congress. And these prohibitory and penal laws of the States have rendered it imperative on Congress to make further and other provisions for carrying into effect the substantial intention of the act of 1793. This is the cause of the introduction into the Senate of a bill on the subject, recently, by the Committee on the Judiciary. Notwithstanding all that may be said by shallow men, ignorant men, and factious men, men whose only hope of making or of keeping themselves conspicuous is by incessant agitation and the most reckless efforts to alarm and misguide the people, I know of no persons, in or out of Congress, who wish any thing more to be done on the subject of fugitives from service, than what is essentially necessary in order to meet the requirements of the Constitution, and accomplish the objects of the act of Congress of 1793. Whatever enactments may be deemed essential to this purpose, I, for one, shall certainly support, as I feel bound to do by my oath of office, and by every consideration of duty and propriety.

As I have already said, the act of Congress of 1793 made no provision for any trial by jury in the State where the arrest of a fugitive is made. I have considered the subject with a conscientious desire to provide for such jury trial, if possible, in order to allay excitement and remove objections. There are many difficulties, however, attending any such provision; and a main one, and perhaps the only insuperable one, has been created by the States themselves, by making it a penal offence in their own officers to render any aid in apprehending or securing such fugitives, and absolutely refusing the use of their jails for keeping them in custody till a jury could be called together, witnesses summoned, and a regular trial had. It is not too much to say, that to these State laws is to be attributed the actual and practical denial of trial by jury in these cases. These ill-considered State laws it is which have absolutely deprived the alleged fugitive, as the case now stands, of any trial by jury, by refusing those aids and facilities without which a jury trial is impossible.

But at the same time, nothing is more false than that such jury trial is demanded in cases of this kind by the Constitution.

either in its letter or in its spirit. The Constitution declares, that in all criminal prosecutions there shall be a trial by jury; the reclaiming of a fugitive slave is not a criminal prosecution. The Constitution also declares, that in suits at common law the trial by jury shall be preserved; the reclaiming of a fugitive slave is not a suit at the common law. And there is no other clause or sentence in the Constitution having the least bearing on the subject.

I have seen a publication by Mr. Horace Mann, a member of Congress from Massachusetts, in which I find this sentence. Speaking of the bill before the Senate, he says: "This bill derides the trial by jury secured by the Constitution. A man may not lose his horse without a right to this trial, but he may his freedom. Mr. Webster speaks for the South and for slavery, not for the North and for freedom, when he abandons this right." This personal vituperation does not annoy me, but I lament to see a public man of Massachusetts so crude and confused in his legal apprehensions, and so little acquainted with the Constitution of his country, as these opinions evince Mr. Mann to be. His citation of a supposed case, as in point, if it have any analogy to the matter, would prove, that, if Mr. Mann's horse stray into his neighbor's field, *he cannot lead him back without a previous trial by jury to ascertain the right.* Truly, if what Mr. Mann says of the provisions of the Constitution, in this publication, be a test of his accuracy in the understanding of that instrument, he would do well not to seek to protect his peculiar notions under its sanction, but to appeal at once, as others do, to that higher authority which sits enthroned above the Constitution and above the law.\*

\* I may be permitted to add, in a note, an extract from a private letter from one of the most distinguished men in England, dated as late as the 29th of January: "Religion is an excellent thing in every matter except in politics. There, it seems to make men mad; and I do not know of any people more mad than the antislavery people, on your side of the water and on ours. Up to the present time, I have no doubt they have aggravated every evil they have endeavored to mitigate or prevent. If you tell one of them what has been the result of his officiousness, he answers, '*Liberavi animam meam.*' I may have done wrong, but I shall go to heaven for it." So I believe that your Abolitionists have made the state of the slave, and still more that of the free black, much worse than it would have been; and probably in many States, that of Virginia, for instance, have retarded his enfranchisement. But they care little, if they save their own souls. On the other hand, the Southerners seem as unreasonable. To require California to accept slavery seems both wicked and unjust."

In these sentences my friend means, undoubtedly, to ascribe the evils which

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Gentlemen, I am extending these remarks, I fear, to quite too great a length; but there is still one characteristic of this "agitation" too remarkable to be omitted.

A member of Congress from Illinois, of talent and rapidly increasing distinction,\* in a speech delivered in the House of Representatives on the 21st day of February, made these very true and pertinent remarks:—

"I am not so unmindful of truth as to deny that, in respect to the subject now under consideration, some of our Southern friends have good cause to complain. But it must have been remarked by all of us, that the Representatives from those States which have really been aggrieved in this respect are not those who have threatened us with disunion. These threats have come from the Representatives of States, from which, I venture to say, on an average not one slave escapes in five years. Who ever heard of a slave escaping from Mississippi or Alabama? Where does he go to? Who helps him away? Certainly not the people of the North. Kentucky, Virginia, Maryland, and Missouri, the only States that are really sufferers by the escape of slaves, do not seem to have dreamed of dissolution as a remedy; while the Representatives from a few of the extreme Southern States, whence slaves could no more escape than from the island of Cuba, see ample cause and imperious necessity for dissolving the Union, and establishing a 'Southern Confederacy,' in the alleged fact that their slaves are enticed away by the citizens of the North."

Now, the counterpart of the "agitation" presents an equally singular and striking aspect, in the fact, that the greatest clamor and outcry have been raised against the cruelty and enormity of the reclamation of slaves in quarters where no such reclamation has ever been made, or if ever made, where the instances are so exceedingly few and far between as to have escaped general knowledge. What, and how many, are the instances of the seizure of fugitive slaves which have happened in New England? And what have been the circumstances of injustice, cruelty, and atrocity attending them? To ascertain the truth in this respect, I have made diligent in-

he so truly states not to true and genuine religion, not to the religion of the Gospel, but to that fanatical notion of religion which sometimes possesses men's imaginations. The religion of the New Testament, that religion which is founded on the teachings of Jesus Christ and his Apostles, is as sure a guide to duty in politics as in any other concern of life.

\* Mr. Bissell.

quiry of members of Congress from the six New England States. On a subject so general, I cannot be sure, of course, that the information received is entirely accurate; and therefore I do not say that the statement which I am about to present may be relied on as altogether correct; but I suppose it cannot be materially erroneous. The result, then, of all I can learn is this. No seizure of an alleged fugitive slave has ever been made in Maine. No seizure of an alleged fugitive slave has ever been made in New Hampshire. No seizure of an alleged fugitive slave has ever been made in Vermont. No seizure of an alleged fugitive slave has been made in Rhode Island within the last thirty years. No seizure of an alleged fugitive slave is known to have been made in Connecticut, except one, about twenty-five years ago; and in that case the negro was immediately discharged for want of proof of identity. Some instances of the seizure of alleged fugitive slaves are known to have occurred, in this generation, in Massachusetts; but, except one, their number and their history are uncertain. That one took place in Boston twelve or fifteen years ago; and in that case some charitably disposed persons offered the owner a sum of money which he regarded as less than half the value of the slave, but which he agreed to accept, and the negro was discharged. A few cases, I suppose, may have occurred in New Bedford, but they attracted little notice, and, so far as I can learn, caused no complaint. Indeed, I do not know that there ever was more than a single case or two arising in that place. Be it remembered, that I am speaking of reclamations of slaves made by their masters under the law of Congress. I am not speaking of instances of violent abduction, and kidnapping, made by persons not professing to be reclaiming their own slaves.

If this be a true account of all that has happened in New England within the last thirty years, respecting the arrest of fugitive slaves, and I believe it substantially is so, what is there to justify the passionate appeals, the vehement and empty declamations, the wild and fanatical conduct, of both men and women, which have so long disturbed, and so much disgraced, the commonwealth and the country? What is there, especially, that should induce public men to break loose from all just restraint, fall themselves into the merest vagaries, and fan, with what they call eloquence, the fires, ever ready to kindle, of pop-

ular prejudice and popular excitement? I suspect all this to be the effect of that wandering and vagrant philanthropy which disturbs and annoys all that is present, in time or place, by heating the imagination on subjects distant, remote, and uncertain.

It is admitted on all hands, that the necessity for any legal provision for the reclaiming of fugitive slaves is a misfortune and an evil; as it is admitted by nearly all, that slavery itself is a misfortune and an evil. And there are States in which the evil attending these reclamations is practically felt. But where the evil really exists, there is comparatively little complaint, and no excitement. Maryland and Pennsylvania, for example, lie, the one on the slave side of the line, the other on the free side. Slaves escape from Maryland, flee into Pennsylvania, and are there arrested. These instances are not unfrequent, and usually create no disturbance and excite no exasperated feeling. In one instance, indeed, a mob assembled to rescue the fugitive, violence ensued, and a life was lost. This of course created popular resentment, and for a considerable time agitated the neighborhood. But in general the people of Pennsylvania understand their neighbors' rights, and are willing that they should be secured and enjoyed. Massachusetts grows servid on Pennsylvania wrongs; while Pennsylvania herself is not excited by any sense of such wrongs, and complains of no injustice. The Abolitionists of Massachusetts, both the out-and-out and the *quasi*, rend the welkin with sympathies for Pennsylvania, while Pennsylvania would quite as willingly be left to her own care of herself. Massachusetts tears fall abundantly for Pennsylvania sufferings, of which sufferings Pennsylvania herself knows little or nothing. No people are more opposed to slavery than the people of Pennsylvania. We know, especially, that that great and respectable part of her population, the Friends, have borne their testimony against it from the first. Yet they create no excitement; they seek not to overthrow or undermine the Constitution of their country. They know that firmness, steadiness of principle, a just moderation, and unconquerable perseverance, are the virtues the practice of which is most likely to correct whatever is wrong in the constitution of the social system. No doubt there are sometimes to be found Friends subject to the frailty of desiring to become conspicuous, or to

the influence of a false sentimentality, or borne away, by the puffs of a transcendental philosophy, into an atmosphere flickering between light and darkness. But that is not a malady of the great body. They remain of sound and disposing minds and memories. I am misled by authority which ought not to mislead, if it be not true that that great body approves the sentiments to which I have given utterance on the floor of the Senate.

Between Kentucky and Ohio complaints have arisen, occasionally, on the subject of fugitive slaves ; but by no means to the extent which has been represented by the Abolition societies. Slaveholders in Kentucky complain of the difficulties which they encounter in reclaiming fugitives ; and the people of Ohio complain, not of the execution of the act of Congress, and reclamations under it, but of the conduct of slaveholders, in coming into the State and taking and carrying back their slaves by force, and without legal process. The State of Ohio has had the discretion not to prohibit her officers and magistrates from performing the duties enjoined on them by the act of Congress. Such duties they perform when occasion requires ; yet as they may be prohibited by the legislature, and as the Supreme Court has decided that it is in the power of Congress to make complete provision, by law, for the whole subject, and to give the power of executing such law to officers of the United States ; and as the prohibitory acts of some of the States make an appropriate and suitable law of the United States indispensable, such law, if passed, would of course be general, and would comprehend Ohio with other States.

The act of 1793 gives a right of action to the owner of a fugitive slave against any person who shall harbor or conceal him. Such actions have been brought in Ohio, and I have heard an eminent judicial authority say, that he has found no more obstruction to the course of judicial proceedings in these cases than in others. Ohio juries try them with as much impartiality and calmness as they try other causes.

Gentlemen, from what I know of the subject, and of the public men and the people of those two States, I fully believe, that, if left entirely to them, a law might be passed perfectly satisfactory to every body except those whose business is agitation, and whose objects are any thing but the promotion of

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peace, harmony, patriotic good-will, and the love of UNION among the people of the United States.

And now, Gentlemen, does not every sober-minded and patriotic man see the necessity, and feel the duty, of rebuking that spirit of faction and disunion, that spirit of discord and of crimination and recrimination, that spirit that loves angry controversy, and loves it, most especially, when evils are imaginary and dangers unreal, which has been so actively employed in doing mischief, and which, it is to be lamented, has received countenance and encouragement in quarters whence better things were looked for?

We are now near the close of the sixth month of the session of Congress. What important measure has been adopted for the advancement of the great interests of the country? For one, I hardly dare expect any progress in useful legislation, until a spirit shall prevail, both in Congress and the country, which shall look more to things important and real, and less to things ideal and abstract. That there are serious difficulties in our present condition, growing out of the acquisition of new territories, is certainly true. These difficulties were foreseen and foretold. An honest and earnest effort was made to avoid and avert them. They are now upon us. But we can overcome them, and still remain a prosperous, happy, and UNITED people, if prudence and conciliation shall animate our public counsels, and a spirit of forbearance, moderation, and harmony spread over the land.

I am, Gentlemen, with entire regard, your obliged fellow-citizen, and obedient servant,

DANIEL WEBSTER.

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*To Dudley C. Hall, Esq., and others, Citizens of Medford, Mass.*

Washington, June 3, 1850.

GENTLEMEN,—I thank you for your letter of the 3d of May last, expressing satisfaction with the sentiments of my speech in the Senate on the great question which now divides the nation, and tendering your thanks for my services in strengthening and preserving our glorious Union.

Gentlemen, we have a country which we love, and of which



we are proud. We have a government under which that country has prospered, for sixty years, in a degree surpassing every thing which has been known in the history of mankind. And this government is founded on the union of the States; which union is established, defined, and sanctioned by the Constitution of the United States. And, Gentlemen, I can conceive no rashness or folly greater than that which would either seek to overturn this Constitution, or, by unprincipled agitation, by heated local controversies, or angry mutual criminations and recriminations between different parts of the country, would effectually weaken the bonds which hold the Union together. It has been, it is, and it will be, my great object to preserve and strengthen the Union, to establish it deeper and stronger in the regard and affections of the people. I wish to see all the powers vested in the government by the Constitution administered with so much prudence, impartiality, and patriotism, that every State, and all the people of every State, should feel profoundly that the union of the States, as now existing, is honorable, useful, and indispensable to the prosperity of every part of the country. And with this purpose always uppermost in my mind and always filling my heart, I studiously avoid useless local controversies, useless abstract questions, and every thing else which unnecessarily exasperates, embitters, or wounds the feelings of any portion of the United States. I have no doubt, Gentlemen, that you and the great body of your fellow-citizens of Massachusetts approve these sentiments and opinions, and will sustain those who honestly act upon them. I have no fear that that great State, which has been among the first and foremost for UNION, from early Colonial times down to the present moment; I have no fear that that great State, which poured out her blood and her treasure like water in the Revolutionary struggle, and afterwards strained every nerve and every muscle for the establishment of the present Constitution; that State, which has enjoyed so fully and felt so sensibly the benefits derived from this united government; I have no fear, not the least, not a particle, that the Commonwealth of Massachusetts will ever expect from those with whom she has intrusted her interests in Congress any thing but uprightness and fairness, impartiality and justice, and a spirit that seeks rather to reconcile opposing interests and allay irritated feelings, than

to foment discord, or to sow or to cultivate the seeds of jealousy and disunion.

I am, Gentlemen, with entire regard, your obliged fellow-citizen and obedient servant,

DANIEL WEBSTER.

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*To G. W. Warren, Esq., Chairman of the Bunker Hill Committee.*

Washington, June 13, 1850.

GENTLEMEN, — You cannot doubt that it would afford me the utmost pleasure to be at Charlestown on the 17th instant, to celebrate the seventy-fifth anniversary of the battle of Bunker Hill.

In addition to the great interest which the occasion itself must naturally excite, I confess I should be glad to have an opportunity of saying some words to so great an assembly of Massachusetts men as will undoubtedly meet together on that day at the foot of the monument. Those words would be few; but they would express what I think to be the duty of every Massachusetts man, and every true American, in the present crisis of the country; and they would proceed from a heart full of anxiety for the future, not the far distant future, but the immediate future, and from a spirit resolved, in the face of all perils, and careless of personal consequences, to make every practicable effort to uphold the CONSTITUTION, as it is, and the UNION, as it is; to defend them against all assault, open or covert; and to exert every faculty to persuade all honest and patriotic men, North and South, to stand between the assaults of extreme factions and the Constitution of their country, and stay the plague. But, Gentlemen, my public duties leave me no option. I must remain here.

I thank you, Gentlemen, for your civility and kindness, and remain, with true regard, your obedient servant,

DANIEL WEBSTER.

*Bunker Hill Monument:* May it crumble to the dust, before it shall look down upon a country dishonored, disgraced, and ruined by the breaking up, by sacrilegious hands, of that UNION which has secured its liberty, fostered its prosperity, and spread its glory and renown throughout the world.

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*To R. H. Gardiner, Esq., and others, Inhabitants of the Cities and Towns on the Kennebec River.*

Washington, June 17, 1850.

GENTLEMEN, — Your friendly and acceptable letter has been duly received.

It is true, Gentlemen, that I have made an effort in the Senate "to allay the spirit of sectional strife, which has threatened the destruction of our Union"; and such efforts I shall continue to make, earnestly, and with whatever ability I possess, under a deep conviction that that "spirit of sectional strife," if not checked, will ere long drive the country into a lamentable and disastrous condition. It is exceedingly to be regretted, that any part of the public press in the State in which you reside, or elsewhere, should discourage, and, as it often does, denounce, all attempts at reconciliation and peace; and should contribute, by its daily effusions, to promote ill-will, resentment, and angry contests between the North and South. That all this is done by a portion of the press, both North and South, is but too true. The conductors of these presses would seem to have lost all sense of a common country, all sentiments of patriotism, unless there may be patriotism in those local feelings in which the great Father of his Country so affectionately admonished us never to indulge. That the conductors of these presses mistake the opinions of the people, to a very considerable extent, I doubt not; but while they are so active and so zealous, who can tell how far, or how fast, their sentiments may spread?

It is no longer to be doubted, that there are persons, both in the North and in the South, who are opposed to the existence of the present Constitution of the United States, and would gladly see it brought to an end. Some in both extremes openly avow this wish, and others conceal it under very thin disguises. Nevertheless, the great body of the people, North and South, are firmly attached to the Union; their hearts are for it, and with it, and they will defend it against all open attempts for its overthrow. This is my decided opinion. The Union, therefore, we may hope, will not be rudely broken up; but this spirit of sectional strife, if it be not effectually rebuked, will produce infinite mischiefs, by embarrassing the government, thwarting and defeating useful legislation, and giving increased

strength to feelings of unkindness and alienation. Who does not see, already, the alarming consequences provoked and produced by these dissensions? We are now in the seventh month of the session of Congress, and what has been done? Even the ordinary annual appropriation bills have not been brought forward, or advanced a single stage. They are at least four months behind the proper time. It has at last become indispensably necessary, it seems to me, that men of sense and intelligence, who are really lovers of their country and its union, should open their eyes to the state of things. There will be, there must be, it is in the nature of things that there should be, some shock, some cessation in the movement of the government, some disreputable irregularity, now not far ahead, unless the good men of the country, in all its parts, will rouse themselves to the performance of the duties which the exigency demands.

While so many persons and so many presses in the North send forth such loud and bitter complaints against the South, and while so many persons and so many presses in the South utter complaints equally loud and bitter against the North, neither the North nor the South states, definitely and precisely, any actual grievance, such as could justify, in any reasonable man's opinion, the most distant idea of disunion. For the most part, these mutual complaints are general, indeterminate, uttered in angry terms, but placed on no specific ground. In the speech to which your letter refers, I have mentioned what I think to be the real ground of mutual or reciprocal complaint; but, beyond all these, there is kept up a general cry of one party against the other, that its rights are invaded, its honor insulted, its character assailed, and its just participation in political power denied. Sagacious men cannot but suspect, from all this, that more is intended than is avowed; and that there lies at the bottom a purpose of the separation of the States, for reasons avowed or disavowed, or for grievances redressed or unredressed. This purpose, be it remembered, I do not consider as pervading large masses, but of its existence among the *extremists*, on both sides, I cannot entertain a question.

In the speech to which you refer, it was my purpose, among other things, to show that a peaceable secession of some States from the rest, or a peaceable separation of them all, was among

the most improbable of imaginable events; that nature, the seas, the gulfs, the lakes, and the rivers, bound us together by ties nearly impossible to be broken; that no man could make any plan of secession or separation satisfactory to others; and, more than all, that no man could discern any thing likely to arise to any State, from secession or separation, not fraught with political evil of every description and every degree. And notwithstanding the influence and the opinions of which I have spoken, I believe that the sentiments of the great mass of Southern men concur with my own. Many have contemplated separation as a probable result; some certainly have desired, and do desire it; but, so far as I have observed, when the question is put directly home to the people, notwithstanding whatever certain presses and certain politicians say to the contrary, the people of the South are still for the Union by immense majorities. Wherever there is a truly American heart, the love of the Union is intertwined with its inmost fibres. It is our duty to encourage and applaud this popular feeling; to respect it ourselves, and to take care that, by no denial of justice, by no unnecessary discussion of exciting but abstract questions, by no threat or menace *to interfere with what does not belong to us*, we weaken that attachment to the Union which is so indispensable to the happiness of all. And what is the duty of the North, in this respect, is equally the duty of the South. All sides are called on to exercise a far greater degree of forbearance and moderation, if we mean to transmit to the next generation the blessings enjoyed by this.

I shall do all I can to warn the country against the dangers of this intestine strife; to call both the South and the North back to a sense of their true duties and their true interests. And if I cannot allay the evil, I shall at least do nothing to promote it. I shall do nothing to cause jealousy, heart-burning, and animosity, among those whose country is one, whose interests are one, and whose destiny, whatever any of them may think of it, is, in my opinion, one; one now, and one hereafter.

Gentlemen, one of the exciting questions of the present moment respects the necessity of excluding slavery, by law, from the territories lately acquired from Mexico. If I believed in any such necessity, I should, of course, support such a law. I could not do otherwise, consistently with opinions very many

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times expressed, and which opinions I have no inclination to change, and shall not change. But I do not believe in any such necessity. I have studied the geography of New Mexico diligently, having read all that I could find in print on the subject, and inquired of many intelligent persons who have been in the country, traversed it, and become familiar with it.

New Mexico may be considered as divided into two parts; one lying on the east side of the Rio Grande, below the Paso del Norte, which is claimed by Texas; the other extending along the river, on both sides, from Paso del Norte to the forty-second degree of north latitude, or the boundary of Oregon. Of this part, also, that which lies on the eastern side of the river is claimed by Texas. The whole extent of both parts can hardly be less than one thousand miles, and by the windings of the river much more. The southern part is far less mountainous than the northern; it has, nevertheless, mountain peaks and mountain ridges. From San Antonio de Bexar, which is a hundred miles north of the Gulf of Mexico, and near the western line of the actual settlements in Texas, it is five hundred and seventy miles to Paso del Norte, by a track or road recently explored, keeping east of the Rio del Norte, and south of the Guadalupe Mountains, the general direction of which road is west by north. This whole country is of very little value. The mountains are barren, and a great portion of the more level country is a mere desert of rocks and sand. Sometimes prairies are met with, producing grass in more or less abundance; but the decisive and fatal characteristic of the country is the want of water. In traversing this region, travellers not unfrequently find themselves without water for twenty or thirty miles, and sometimes even for longer distances. I think an exploring expedition, which within the last year passed along this route, found no water for seventy miles. It may be truly said, that here is a country of six hundred miles in extent, which, in its general character, must be described as a barren desert. I agree that, in a considerable part of this desert, African slave labor is not necessarily excluded by the law of climate; the climate is mild enough; but then *all labor*, free or slave, all cultivation whatever, is excluded, for all time, by the sterility of the soil, throughout this vast arid region. There may be trifling exceptions here and there, on the banks of some of the streams; but

the general character, without doubt or question, is such as I have represented it. Major Gaines, a very intelligent gentleman, lately a member of Congress, and now governor of Oregon, traversed a part of this country during the Mexican war, and this is his description of it:—

“The country from the Nueces to the valley of the Rio Grande is poor, sterile, sandy, and barren, with not a single tree of any size or value on our whole route. The only tree which we saw was the musquit-tree, and very few of these. The musquit is a small tree, resembling an old and decayed peach-tree. The whole country may be truly called a perfect waste, uninhabited and uninhabitable. There is not a drop of running water between the two rivers, except in the two small streams of San Salvador and Santa Gertrudis, and these only contain water in the rainy season. Neither of them had running water when we passed them. The *chaparral* commences within forty or fifty miles of the Rio Grande. This is poor, rocky, and sandy; covered with prickly pear, thistles, and almost every sticking thing, constituting a thick and perfectly impenetrable undergrowth. For any useful or agricultural purpose the country is not worth a *sous*.

“So far as we were able to form any opinion of this desert upon the other routes which had been travelled, its character, everywhere between the two rivers, is pretty much the same. We learned that the route pursued by General Taylor, south of ours, was through a country similar to that through which we passed; as also was that travelled by General Wool from San Antonio to Presidio, on the Rio Grande. From what we both saw and heard, the whole command came to the conclusion which I have already expressed, that it was worth *nothing*. I have no hesitation in saying, that I would not hazard the life of one valuable and useful man for every foot of land between San Patricio and the valley of the Rio Grande. The country is not now, and can never be, of the *slightest value*.”

That most lamented and distinguished gentleman and officer, the late Colonel Hardin, of Illinois, entirely concurs with Major Gaines. Here is his account:—

“*The whole country is miserably watered. Large districts have no water at all. The streams are small, and at great distances apart. One day we marched, on the road from Monclova to Parras, thirty-five miles without water; a pretty severe day's march for infantry.*

“Grass is very scarce, and, indeed, there is none at all in many regions for miles square. Its place is supplied with prickly pear and thorny bushes. There is not one acre in two hundred, more probably

not one in five hundred, of all the land we have seen in Mexico, which can ever be cultivated; the greater part of it is the most desolate region I could ever have imagined. The pure granite hills of New England are a paradise to it, for they are without the thorny briers and venomous reptiles which infest the barbed barrenness of Mexico. The good land and cultivated spots in Mexico are but dots on the map. Were it not that it takes so very little to support a Mexican, and that the land which is cultivated yields its produce with little labor, it would be surprising how its sparse population is sustained. All the towns we have visited, with, perhaps, the exception of Parras, are depopulating, as is also the whole country."

The country higher up, that is, along the Rio del Norte, from Paso del Norte to Santa Fé and Taos, is different in this respect. Through this part of New Mexico the river runs between immense mountains, with strips or ribands of land along its banks, not always continuous, which are cultivated with grains, but only by means of irrigation.

The statements of Mr. Smith, the Delegate from New Mexico, are to the same effect.

My speech was delivered on the 7th of March. Speaking of what I thought the impossibility of the existence of African slavery in New Mexico, I said, "I would not take pains uselessly to reaffirm an ordinance of nature, or to reenact the will of God." Every body knew that, by the "will of God," I meant that expression of the Divine purpose in the work of creation which had given such a physical formation to the earth, in this region, as necessarily to exclude African slavery from it for ever. Every body knew I meant this, and meant nothing else. To represent me as speaking in any other sense was gross injustice. Yet a pamphlet has been put into circulation, in which it is said that my remark is "undertaking to settle by mountains and rivers, and not by the Ten Commandments, the question of human duty." "Cease to transcribe," it adds, "upon the statute-book what our wisest and best men believed to be the will of God, in regard to our worldly affairs, and the passions which we think appropriate to devils will soon take possession of society." One hardly knows which most to condemn, the nonsense or the dishonesty of such commentaries on another's words. I know no passion more appropriate to devils than the passion for gross misrepresentation and libel. Others, from whom more



fairness might have been expected, have not failed to represent me as arguing, or affording ground of argument, against human laws to enforce the moral laws of the Deity. Such persons knew my meaning very well. They chose to pervert and misrepresent it. That is all.

In classical times, there was a set of small, but rapacious critics, denominated *captatores verborum*, who snatched and caught at particular expressions; expended their strength on the *disjecta membra* of language; birds of rapine, who preyed on words and syllables, and gorged themselves with feeding on the garbage of phrases chopped, dislocated, and torn asunder, by themselves, as flesh and limbs are by the claws of unclean birds. Such critics are rarely more distinguished for ability in discussion, than for that manly moral feeling which disdains to state an adversary's argument otherwise than fairly and truly, and as he meant to be understood.

But other gentlemen, of much more acquaintance with New Mexico than I can pretend to, have expressed the same opinion as I have done, in respect to the natural causes which must for ever exclude slavery from that country; and it has been thought remarkable that an intelligent field-officer in the American army, in writing a private letter to a friend here, dated at Santa Fé, the capital of New Mexico, two days before my speech was delivered, that is, on the 5th of March, should have used this language:—

“We have no papers later than the President's message. I fancy Congress is debating about slavery in New Mexico, where *slavery is prohibited by a stronger than all human laws, the law of climate, and production, and self-interest*. Not more than a hundredth part of New Mexico could ever be cultivated, if water were ever so plenty, such is the soil, topography, and rock of this land. But in the centre of a vast area, without large bodies of water, the rocky surface sending what little water falls upon it rapidly down to the ocean, under an atmosphere ever thirsty, into which evaporation is marvellously rapid, not more than one part in two hundred and fifty can ever be improved.”

And now, Gentlemen, I have one other consideration to bring to your minds; and that is, that the slavery of the African race does not exist in New Mexico; that it is altogether abolished; that there is not a single African slave to be found among any of its mountains, or in any part of its vast plains. The people

of New Mexico, to a man, are opposed to slavery; their state of society rejects it; the use of cheaper labor rejects it; the opinions, the sentiments, and feelings of the people all reject it, as warmly and decidedly as it is rejected by the people of Maine. And it appears to me just about as probable that African slavery will be introduced into New Mexico, and there established, as it is that it will be established on Mars' Hill, or the side of the White Mountains.

Among the maxims left us by Lord Bacon, one is, that, when seditions or discontents arise in the state, the part of wisdom is to remove, by all means possible, the causes. The surest way to prevent discontents, if the times will bear it, he says, is to take away the matter of them; for if there be fuel prepared, it is hard to tell whence the spark shall come that shall set it on fire. So counsels Lord Bacon; but with us there are other advisers. Although the dispute be obviously altogether unimportant, and although the times will well bear the taking away of the matter of it, *their* patriotic ardor still admonishes us to continue the contest, to fight it out; if the oyster be gone, still to make fierce battle for the shell; nor give up the warfare till we obtain a joyful victory, or nobly fall.

Gentlemen, I will conclude this letter by a short reference to one other topic. A good deal of complaint has been manifested, as you know, on account of the opinions expressed in my speech respecting Texas, and the legal construction and effect of the resolutions by which she became annexed to the United States. Surprise and astonishment, and all the eloquence of capital letters and notes of admiration, have been summoned to mark the utterance of such new and startling sentiments. The truth is, however, that there is nothing new in the whole matter. The same view, substantially, of the resolutions of annexation had been taken, again and again, by myself and others.

Gentlemen, I voted against the treaty by which these territories were ceded by Mexico to the United States; and in open Senate, in a speech made on the 23d of March, 1848, I referred to Texas and to the resolutions of annexation. The speech was published in the newspapers, and circulated in pamphlet form, and read by every body who chose to read it. In that speech you will find these words:—

"Now, Sir, I do not depend on theory. I ask you, and I ask the Senate and the country, to look at facts, to see where we were when we made the departure three years ago, and where we now are, and I shall leave it to imagination to conjecture where we shall be.

"We admitted Texas as one State for the present. But if you will refer to the resolutions providing for the annexation of Texas, you will find a provision that it shall be in the power of Congress hereafter to make four other new States out of Texan territory. Present and prospectively, therefore, five new States, sending ten Senators, may come into the Union out of Texas. Three years ago we did that. Now we propose to make two States; for, undoubtedly, if we take what the President recommends, New Mexico and California each will make a State; so that there will be four Senators. We shall have, then, in this new territory, seven States, sending fourteen Senators to this chamber. Now, what will be the relation between the Senate and the people, or the States from which they come?"

You will see that here is the same opinion of the meaning of the resolutions of annexation, expressed nearly in the same words, as are contained in my speech of the 7th of March last. And this only two years ago. But nobody then expressed either surprise or astonishment. There was no call to arms, no invocation of the genius of Liberty, to resist a false construction of an act of Congress; there were no stirring and rousing paragraphs in the newspapers, no patriotic appeals to the people, and no insane declarations, such as we now hear, that the Texan resolutions are utterly void.

But, Gentlemen, I will pursue no further a topic of some little interest to myself, but of no great importance to you, or the country. I leave it with the single remark, that what was true in respect to the construction of an act of Congress in 1848, must be true in the same case in 1850; and if an individual, on his own authority, may declare one act of Congress void, he may with equal propriety absolve himself from the obligations imposed on him by all other acts; and his oath binds him only to the observance of such laws as he himself approves. How far such a sentiment is fit to be acted upon by men, or to be instilled into the minds of youth, the country must judge.

But you, and the whole country, Gentlemen, are interested most deeply in knowing what is the prospect of a settlement of existing difficulties. On this point, I am happy to say that

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I can speak with hope, if not with confidence. I think I see indications that the public judgment will, ere long, be brought to bear upon these troublesome and exciting questions, and that the voice of a majority of the people will hush other discordant voices. How soon this will happen I cannot say; but I fully believe that the floods will yet subside, that the troubled waters will return within their banks, and the current of public affairs resume its accustomed and beneficial course.

I am, Gentlemen, your obliged fellow-citizen and obedient servant,

DANIEL WEBSTER.

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*To the Rev. Ebenezer Price and others, Neighbors of Mr.  
Webster in New Hampshire.*

Washington, September 21, 1850.

GENTLEMEN,—I have received your letter of last month, expressing your approbation of my public political conduct, and especially of my efforts in Congress to settle questions which have long agitated the country and disturbed its peace. Happily, Gentlemen, those questions are now, I trust, disposed of, and better prospects open upon the country.

The thirty-one American States stretch over a vast extent of country running through several degrees of latitude and longitude, and embracing many varieties of soil, climate, institutions, habits, and pursuits; yet over all the Union and the Constitution still stand, everywhere giving protection and security, and everywhere cherished at the present moment with general and warm patriotic regard. The interests of the different parts of the country, though various, are not opposite; flowing, indeed, in diverse channels, but all contributing to swell the great tide of national prosperity. Under the operation of the Constitution, we have now been for sixty years free and happy; civil and religious liberty have stood firm and unshaken; popular education has received a new impulse and a wider spread, and moral and religious instruction has become characteristic of our age; agriculture, commerce, and manufactures have been steadily encouraged and sustained; and, under the blessing of Providence, general competency and satisfactory means of living

have everywhere rewarded the efforts of labor and industry. And in the mean time, Gentlemen, the country has attained to such a degree of honor and renown, that every patriotic man, in addition to his own individual means of enjoyment, derives a positive pleasure from participating in the reputation of his country. Of what other country upon earth can this be said with so much truth?

Who, then, would undermine this Union? Who would raise his hand against this Constitution? Who would scoff at those political and social blessings which Providence has never before seen fit to vouchsafe, in such abundance, to any community of men? Self-love, our hopes for the future, national pride, and gratitude to God, all conspire to prompt us to embrace these institutions of our native land with all the affections of our hearts, and to defend them with all the strength of our hands. In a critical hour, and not without some personal hazard, I have discharged my duty, and freed my conscience, to its very depth, in public efforts to maintain them, limited only by the measure of my ability. And since these efforts are regarded as having contributed something to the adjustment of dangerous controversies, and to the establishment of peace and harmony among fellow-citizens and brothers, I desire no reward but the cheering voices of good men and the approbation of my own conscience.

And now, friends and neighbors, I could pour out my heart in tenderness of feeling for the affectionate letter which comes from you. Approving voices have been heard from other quarters; other commendations have reached me, high enough and warm enough to demand, as they have received, my most grateful acknowledgment and regard. But yours comes from home; it comes from those whom I have known, and who have known me, from my birth. It is like the love of a family circle; its influences fall upon my heart as the dew of Hermon. Those of you who are most advanced in age have known my father and my family, and especially that member of it whose premature death inflicted a wound in my breast which is yet fresh and bleeding. Some of you were my companions in the country schools; with others I have partaken in the sports of youth, the cheerful labor of the field of agriculture, and in the associations and exercises of early manhood. I see on the list

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learned, and now aged and venerable clergymen; professional gentlemen and magistrates, of my own age, whom I have long honored and esteemed; and others of all classes and all pursuits in life. There are on the list, also, not a few who bear my name and partake my blood. What I was in early life you all know; towards what I may have done, at subsequent periods, for the good of the country, you have ever manifested sufficiently favorable and partial regard; and now, after I have been called upon to act a part in a more important crisis, perhaps, than any other of my life, your kind regard, your neighborly recognition of former days and former friendships, and the affectionate terms in which you express yourselves, make your letter a treasure, precious in my esteem, which I shall keep near me always while I live, and leave for the gratification of those who may come after me.

Your obliged friend and neighbor,

DANIEL WEBSTER.

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*To Messrs. F. S. Lathrop and others, New York.*

Franklin, N. H., October 28, 1850.

GENTLEMEN, — Nothing in the world but regard for the state of my health prevents me from accepting at once your invitation, and assuring you of my presence at the "Union Meeting" at Castle Garden, on Wednesday evening next. I rejoice to know that such a meeting is called; I rejoice to know that it will be attended by thousands of intelligent men, lovers of their country, party men, doubtless, but abject slaves to no party, and who will not suffer either party clamor or party discipline to dry up within them all the fountains of love and attachment to the Constitution of their country. The voice of such a meeting will be heard and respected. It will rebuke disobedience to the laws, actual or threatened; it will tend to check the progress of mad fanaticism; it will call men who are honest, but who have been strangely misled, back to their duty; and it will give countenance and courage to the faithful friends of the Union throughout the land. When the commercial interests of the great metropolis of the country speak, with united hearts and voices express-

ing their conviction of the presence of the great danger, and a determined purpose to meet that danger, to combat with it, and overcome it, the example is likely to rouse good men everywhere; and when the country shall be roused, the country will be safe. I concur, Gentlemen, in all the political principles contained in the resolutions, a copy of which has been sent to me; and I stand pledged to support those principles publicly and privately, now and always, to the extent of my influence, and by the exertion of every faculty which I possess. The eminent men whom you mention, and with whose names you have done me the honor to associate mine, are well worthy of the praise which you bestow on them. I shall never forget, and I trust the country will never forget, the patriotism, the manliness, the courage, manifested by them in an hour of difficulty and of peril.

The peace measures of the last session are the Texan boundary act, the act for establishing the two territorial governments of New Mexico and Utah, the act for the abolition of the slave-trade in the District of Columbia, and the Fugitive Slave Law. This last measure, Gentlemen, is not such a measure as I had prepared before I left the Senate, and which, of course, I should have supported if I had remained in the Senate. But it received the proper sanction of the two houses of Congress and of the President of the United States. It is the law of the land, and as such is to be respected and obeyed by all good citizens. I have heard no man whose opinion is worth regarding deny its constitutionality, and those who counsel violent resistance to it counsel that which, if it takes place, is sure to lead to bloodshed and to the commission of capital offences. It remains to be seen how far the deluded and deluders will go on in this career of faction, folly, and crime. There were honest and well-meaning members of Congress who did not see their way clear to support these great and leading measures of the last session. You are quite right in saying that the motives of these gentlemen ought not to be impeached. But the measures have been adopted; they have become laws, constitutionally and legally binding upon us all, and no man is at liberty to oppose them.

No man is at liberty to set up, or affect to set up, his own conscience as above the law, in a matter which respects the

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rights of others, and the obligations, civil, social, and political, due to others from him. Such a pretence saps the foundation of all government, and is of itself a perfect absurdity; and while all are bound to yield obedience to the laws, wise and well-disposed citizens will forbear from renewing past agitation, and rekindling the flames of useless and dangerous controversy.

If we would continue one people, we must acquiesce in the will of the majority, constitutionally expressed, and he who does not mean to do that means to disturb the public peace, and do what he can to overturn the government.

Gentlemen, I am led to the adoption of your last resolution, in an especial and emphatic manner, by every dictate of my understanding, and I embrace it with full purpose of heart and hand. Its sentiment is my sentiment. With you, I declare that I "range myself under the banners of that party whose principles and practice are most calculated to uphold the Constitution and to perpetuate our glorious Union."

Gentlemen, I am here to recruit my health, enfeebled as it has been by ten months' excessive labor and indescribable anxiety. The air of these my native hills renews my strength and my spirits. I feel its invigorating influences while I am writing these few lines; and I shall return shortly to my post, to discharge its duties as well as I can, and resolved, in all events, that, so far as depends on me, our Union shall pass through this fiery trial without the smell of smoke upon its garments.

I am, Gentlemen, with very sincere regard, your obliged fellow-citizen and obedient servant,

DANIEL WEBSTER.

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*To Messrs. William Kinney and others, of Staunton, Virginia.*

Washington, November 23, 1850.

GENTLEMEN,— On my arrival in this city last evening, I had the pleasure of receiving your communication of the 7th instant. It is a refreshing, an encouraging, and a patriotic letter. You speak the sentiments which become the people of the great and ancient Commonwealth of Virginia. You speak as Wythe and Pendleton, Jefferson, Marshall, and Madison would speak were



they yet among us. You speak of the union of these States; and what idea can suggest more lively emotion in the minds of the American people, of present prosperity, past renown, and future hopes? Gladly would I be with you, Gentlemen, on the proposed occasion, and, as one of your countrymen and fellow-citizens, assure you of my hearty sympathy with you in the opinions which you express, and my unchangeable purpose to coöperate with you and other good men in upholding the honor of the States and the Constitution of the government. How happy should I be to present myself in Virginia, west of the Blue Ridge, and there to pledge mutual faith with the men of Augusta and Rockbridge, Bath, Alleghany, and Pocahontas, Highland, Pendleton, and Rockingham, that, while we live, the institutions of our wise and patriotic sires shall not want supporters, and that, so far as may depend on us, the civilized world shall never be shocked by beholding such a prodigy as the voluntary dismemberment of this glorious republic. No, Gentlemen, never, never! If it shall come to that, political martyrdom is preferable to such a sight. It is better to die while the honor of the country is untarnished, and the flag of the Union still flying over our heads, than to live to behold that honor gone for ever, and that flag prostrate in the dust. Gentlemen, I speak warmly, because I feel warmly, and because I know that I speak to men whose hearts are as warm as my own, in support of the country and the Union.

I am lately from the North, where I have mixed extensively with men of all classes and all parties, and I assure you, Gentlemen, through the masses of the Northern people the general feeling and the great cry is for the Union, and for its preservation. There are, it is true, men to be found, some of perverse purposes, and some of bewildered imaginations, who affect to suppose that some possible, but undefined good would arise from a dissolution of the ties which bind these United States together. But be assured the number of these men is small; the eminent leaders of all parties rebuke them, and while there prevails a general purpose to maintain the Union as it is, that purpose embraces, as its just and necessary means, a firm resolution of supporting the rights of all the States precisely as they stand guarantied and secured by the Constitution. And you may depend upon it, that every provision in that instrument in favor

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of the rights of Virginia, and the other Southern States, and every constitutional act of Congress passed to uphold and enforce those rights, will be upheld and maintained, not only by the power of the law, but also by the prevailing influence of public opinion.

Accidents may occur to defeat the execution of a law in a particular instance; misguided men may, it is possible, sometimes enable others to elude the claims of justice and the rights founded in solemn constitutional compact; but on the whole, and in the end, the law will be executed and obeyed. The South will see that there is principle and patriotism, good sense and honesty, in the general mind of the North, and that, among the great mass of intelligent citizens in that quarter, the prevailing disposition to ask for justice is not stronger than the disposition to grant it to others.

Gentlemen, we are brethren; we are descendants of those who labored together with intense anxiety for the establishment of the present Federal Constitution. Let me ask you to teach your young men, into whose hands the power of the country must soon fall, to go back to the close of the Revolutionary war; to contemplate the feebleness and incompetency of the confederation of States then existing; and to trace the steps by which the intelligence and patriotism of the great men of that day led the country to the adoption of the existing Constitution. Teach them to study the proceedings, votes, and reports of committees in the old Congress. Especially draw their attention to the leading part taken by the Assembly of Virginia from 1783 onward. Direct their minds to the convention at Annapolis in 1786; and by the contemplation and study of these events and these efforts, let them see what a mighty thing it was to establish the government under which we have now lived so prosperously and so gloriously for sixty years. But pardon me; I must not write an essay or make a speech. Virginia! true-hearted Virginia! stand by your country, stand by the work of your fathers, stand by the union of the States, and may Almighty God prosper all our efforts in the cause of liberty, and in the cause of that united government which renders this people the happiest people on whom the sun ever shone!

I am, Gentlemen, yours truly and faithfully,

DANIEL WEBSTER.

*To J. A. Hamilton, Esq., and others, Westchester, New York.*

Washington, January 27, 1851.

GENTLEMEN,—I have to acknowledge the receipt of your letter of the 16th of this month, inviting me to attend a meeting proposed to be holden at Tarrytown on the 30th instant, by the people of Westchester County, without any distinction of party, who approve of the compromise measures of the last session of Congress. My public duties do not allow me to accept this invitation; but you need not doubt that I cordially approve the objects and purposes for which the people of Westchester propose to assemble.

I hope the spirit of disunion may be considered as now, in some degree, checked; but that it has existed, both at the North and the South, and does still exist to a dangerous extent, cannot, as it seems to me, be denied by any honest man.

In the South, the separation of the States is openly proposed, discussed, and recommended, absolutely or conditionally, in legislative halls, and in conventions called together by the authority of law.

In the North, the State governments have not run into such excess, and the purpose of overturning the government shows itself more clearly in resolutions agreed to in voluntary assemblies of individuals, denouncing the laws of the land, and declaring a fixed intent to disobey them.

I notice that in one of these meetings, holden lately in the very heart of New England, and said to have been very numerously attended, the members unanimously resolved, "that, as God is our helper, we will not suffer any person charged with being a fugitive from labor to be taken from among us, and to this resolve we pledge our lives, our fortunes, and our sacred honor."

These persons do not seem to have been aware that the purpose thus avowed by them is distinctly treasonable. If any law of the land be resisted, by force of arms or force of numbers, with a declared intent to resist the application of that law, in all cases, this is levying war against the government, within the meaning of the Constitution, and is an act of treason, drawing after it all the consequences of that offence. This is the precise case in which convictions for treason took place in Pennsylvania.

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nia during the elder Mr. Adams's administration. And not only does such a spirit as this manifest itself in heated and violent public assemblies, but it is also defended, encouraged, and commended by a considerable portion of the public press; and, what is still worse, the pulpit has, in too many instances, uttered these tones of opposition to the law, instead of the voice of Christian meekness, repentance, and the fear of God. Indeed, occasions have happened in which men and women have engaged in a sort of rivalry or contest to see whether the laws of society, or the institution of religion and the authority of the Divine Revelation, could be treated with the more contempt.

It is evident that, if this spirit be not checked, it will endanger the government; if it spread far and wide, it will overthrow the government.

There are ample pledges, Gentlemen, that with you and your fellow-citizens of Westchester no other feeling will be entertained than that of zealous attachment to the Union and the Constitution, and a determination to support both to the last extremity. Among your committee I see the son of a great and an illustrious man, equally distinguished in the revolutionary and the constitutional history of his country. ALEXANDER HAMILTON was one of the twelve commissioners who met at Annapolis in September, 1786, and recommended to the country the establishment of a constitution of government "adequate to the exigencies of the Union." Here was the cradle of that form of government which has so long bound us all together, and made us so prosperous at home and so much respected abroad. Where the blood of Alexander Hamilton fills the veins, or his example and patriotic services are remembered, the language of separation, secession, and disunion will find no utterance, and purposes of violent resistance to the laws no approbation or tolerance.

Gentlemen, the mortal remains of another great man, venerated and loved through the whole course of a long life, repose in the county of Westchester; of course, I mean JOHN JAY. The public life of this illustrious man was almost entirely devoted to the preservation of the union of the States, the establishment of the Constitution, and the administration of the powers conferred by it. No man saw more clearly, or felt more deeply, the evils arising from the existence of States with entire

and distinct sovereignties. No man appealed to his countrymen against such a state of things with more earnestness, eloquence, or power. He saw the beginning of a spirit very much like that which exists now; he foretold its dangers, and did as much as any man to rescue the public opinion from its pernicious grasp.

In 1785 he wrote to a friend: "It is my first wish to see the United States assume and merit the character of one great nation, whose territory is divided into different States merely for more convenient government."

In 1787 he said: "It has until lately been a received and uncontradicted opinion, that the prosperity of the people of America depended on their continuing firmly united; and the wishes, prayers, and efforts of our best and wisest citizens have been constantly directed to that object. But politicians now appear, who insist that this opinion is erroneous, and that, instead of looking for safety and happiness in union, we ought to seek it in a division of the States into distinct confederacies or sovereignties. . . . This country and this people seem to have been made for each other, and it appears as if it was the design of Providence that an inheritance so proper and convenient for a band of brethren united to each other by the strongest ties should never be split into a number of unsocial, jealous, and alien sovereignties. . . . They who promote the idea of substituting a number of distinct confederacies, in the room of the plan of the convention, seem clearly to foresee that the rejection of it would put the continuance of the Union in the utmost jeopardy. That certainly would be the case; and I sincerely wish that it may be as clearly foreseen by every good citizen, that, whenever the dissolution of the Union arrives, America will have reason to exclaim, in the words of the poet, 'Farewell! a long farewell to all my greatness.'"

When I am speaking of the ardent attachment of John Jay to the union of the American States, I cannot forbear, even at the risk of extending this answer beyond its proper limits, from introducing another extract from his admirable writings, as exhibiting remarkable sagacity and power of illustration. "We have heard much," said he, "of the fleets of Britain; and, if we are wise, the time may come when the fleets of America may engage attention. But if one national government

had not so regulated the navigation of Britain as to make it a nursery for seamen, if one national government had not called forth all the national means and materials for forming fleets, their prowess and their thunder would never have been celebrated. Let England have its navigation and fleet, let Scotland have its navigation and fleet, let Wales have its fleet, let Ireland have its navigation and fleet, let these four of the constituent parts of British empire be under four independent governments, and it is easy to perceive how soon they would each dwindle into comparative insignificance."

When John Jay filled the seat at the head of the supreme judicature, how would one appear, who, being charged with crime, should stand up before his face, beaming equally with intelligence and benignity, and insist that he had disobeyed the law only from the impulse of his own individual conscience; that he had disregarded plighted faith, violated the most important obligations, and contemned the sanctity of oaths, only upon his reliance on the superiority of his own intelligence over that of the community, and the right of every individual to judge of constitution, laws, and compacts for himself?

Gentlemen, I am sure that you and your friends will do your whole duty, as intelligent and patriotic citizens, in upholding the institutions of your country. I purpose to do mine, and should not consent to act with any body who might be found to waver or to hesitate on this all-important question.

The President's message at the opening of the present session of Congress expresses fully and plainly his own opinion, and the unanimous opinion of all those associated with him in the executive administration of the government, in regard to what are called the adjustment or compromise measures of last session. That opinion is, that those measures should be regarded in principle as a final settlement of the dangerous and exciting subjects which they embrace; that, though they were not free from imperfections, yet in their mutual dependence and connection they formed a system of compromise the most conciliatory and best for the entire country that could be obtained from conflicting sectional interests and opinions; and that therefore they should be adhered to until time and experience should demonstrate the necessity of further legislation to guard against evasion or abuse. That opinion, so far as I know, remains en-

tirely unchanged, and will be acted upon steadily and decisively. The peace of the country requires this; the security of the Constitution requires this; consistency requires this; and every consideration of the public good demands this. If the administration cannot stand upon the principles of the message, it does not expect to stand at all.

Citizens of Westchester! Citizens of the State of New York! The voices of your own illustrious dead cry to you from the ground. They who are in their graves beseech you, as you respect their names and memories, as you love liberty, as you value your own happiness, as you regard the hopes of your children, to hold on with unflinching firmness to the Constitution and to the union of the States; and, as if with lips still living, they conjure you, in tones of indignation, to reject all such ideas as that disobedience to the laws is the path of patriotism, or treason to your country duty to God.

For myself, I confess that, if I were to witness the breaking up of the Union and the Constitution of the United States, I should bow myself to the earth in confusion of face; I should wish to hide myself from the observance of mankind, unless I could stand up and declare truly, before God and man, that by the utmost exertion of every faculty with which my Creator had endowed me I had labored to avert the catastrophe.

I am, Gentlemen, with entire regard and all good wishes, your obliged friend and fellow-citizen,

DANIEL WEBSTER.

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*To the New York Committee for the Celebration of the Birthday of Washington.*

Washington, February 20, 1851.

GENTLEMEN,—It is a source of deep regret to me, that my public duties absolutely prohibit me from having the pleasure of accepting your invitation, in behalf of the Union Safety Committee, to attend a public dinner on the Twenty-second, in honor of that auspicious day. Auspicious indeed! All good influences, all omens of independence, liberty, free government, the creation of a nation, its prosperity, happiness, and

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glory, hung over the hour when the eyes of Washington first opened to the light.

You say truly, Gentlemen, that the present moment admonishes us to rally in support of his principles, to express anew our admiration of his character, and our gratitude for his parting lessons of patriotism and wisdom.

You say truly, Gentlemen, that the great duty devolving on us is that of regarding the Union as the foundation of our peace and happiness, and the Constitution as the cement of that Union. So Washington regarded them; so he conjured his fellow-citizens, in all generations, to regard them; and whenever his Farewell Address to his country shall be forgotten, and its admonitions rejected by the people of America, from that time it will become a farewell address to all the bright hopes of human liberty on earth.

Gentlemen, the character of Washington is among the most cherished contemplations of my life. It is a fixed star in the firmament of great names, shining without twinkling or obscuration, with clear, steady, beneficent light. It is associated and blended with all our reflections on those things which are near and dear to us. If we think of the independence of our country, we think of him whose efforts were so prominent in achieving it; if we think of the Constitution which is over us, we think of him who did so much to establish it, and whose administration of its powers is acknowledged to be a model for his successors. If we think of glory in the field, of wisdom in the cabinet, of the purest patriotism, of the highest integrity, public and private, of morals without a stain, of religious feelings without intolerance and without extravagance, the august figure of Washington presents itself as the personation of all these ideas.

You do well, Gentlemen, at this interesting hour, to invoke his example, to spread over all the land a knowledge of his principles among the rising generation, and fervently to pray Heaven that the spirit which was in him may also be in us.

When Washington, in behalf of the convention, presented to the old Congress and to the country that Constitution which was the production of their patriotic and assiduous labors, he made this most important declaration: "In all our deliberations upon this subject, we kept steadily in our view, that which ap-



pears to us the greatest interest of every true American the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the convention to be less rigid on points of inferior magnitude than might have been otherwise expected; and thus the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable."

And when his public career was drawing to a close, he left to his country, as his last, best gift, his most earnest and affectionate exhortation, to uphold that Union as the main pillar of independence, and to frown indignantly upon the first dawning of any attempt to dissolve it.

The advice is heeded now, and will be heeded hereafter. But, nevertheless, there are some among us on whom it is no injustice that those frowns of indignation should fall. There are those who are altogether for abandoning the Union, and alienating one portion of the country from the rest. They avow their wishes, they disclose their purposes. They open their hearts, and in those hearts there is found no pulsation for that Union which makes all Americans one people. All is but the ebbing and the flowing of the dark, unwholesome, troubled current of secession, schism, and separation.

We have seen propositions for secession formally brought forward, and solemnly discussed in the legislatures and conventions of several of the States. Other conventions are soon to be holden, under regular legislative provisions, to consider the same subject. In one important State, recent elections show that there prevails among the people almost an entire unanimity of sentiment in favor of breaking up the Union; and this dissolution of the Union, it is supposed, may not take place without conflict in arms. Munitions of war are therefore provided, schools of instruction in military tactics established, and an armed air and attitude assumed. These apprehensions of conflict, in case secession be attempted, are not only well founded, but, in my judgment, certain to be realized. Secession cannot be accomplished but by war. I do not believe those who favor it expect any other result. Their hope is, that their cause and

its objects may spread; and that other States, by local sympathies, or a supposed common interest, may be led to espouse it; so that the whole country may come to be divided into two great local parties, and as such to contend for the mastery.

But Providence has not forsaken us. This object, I believe, has been defeated by the measures of adjustment adopted by Congress at the last session, and by the spirit, ability, and success with which the friends of the Union have resisted it in the South. Nor have the efforts of your association, Gentlemen, been either unimportant or unavailing. Your voices have been heard throughout the whole land, and no man can doubt how the great commercial metropolis of the country feels and acts, or hereafter will feel and act, on questions involving public interests of such indescribable magnitude.

We have recently been informed, Gentlemen, of an open act of resistance to law, in the city of Boston; and if the accounts be correct of the circumstances of this occurrence, it is, strictly speaking, a case of treason. If men combine and confederate together, and by force of arms or force of numbers effectually resist the operation of an act of Congress, in its application to a particular individual, with the avowed purpose of making the same resistance to the same act in its application to all other individuals, this is levying war against the United States, and is nothing less than treason. Now, I understand that the persons concerned in this outrage in Boston avow openly their full purpose of preventing, by arms, or by the power of the multitude, the execution of process for the arrest of an alleged fugitive slave in any and all cases whatever. I am sure, Gentlemen, that shame will burn the cheeks, and indignation fill the hearts, of nineteen twentieths of the people of Boston, at the avowal of principles and the commission of outrages so abominable. Depend upon it, that, if the people of that city had been informed of any such purpose or design as was carried into effect in the court-house in Boston, on Saturday last, they would have rushed to the spot, and crushed such a nefarious project into the dust. The vast majority of the people of Boston must necessarily suffer in their feelings, but ought not to suffer at all in their character or reputation for loyalty to the Constitution, from the acts of such persons as composed the mob. I venture to say, that when you hear of them next,

you will learn that, personally and collectively, as individuals, and also as represented in the city councils, they will give full evidence of their fixed purpose to wipe away, and obliterate to the full extent of their power, this foul blot on the good name of their city.

And now, Gentlemen, when projects of dissolution have taken so much of form and pressure in public bodies in the South, when lawless violence, trampling on the public authorities, stalks forth so boldly in the North, you will see that your work, highly prosperous thus far, is nevertheless not yet concluded. It is wise and patriotic, therefore, that you commemorate your love of country, strengthen your resolution to maintain the Constitution, the Union, and the laws, by uniting to celebrate the anniversary of the birth of the great Father of his Country. You do well to call to memory his services, to revive in your own bosoms his love of liberty and order, and to draw in patriotic inspirations from his principles and his example. For these principles and this example, there will be found respect and admiration everywhere, where there is a true love for the institutions of the country. And every American may well doubt the patriotism of his own heart, when he finds that in that heart veneration for Washington begins to be languishing and dying away.

Gentlemen, the path of duty before you, and before me, is plain and broad ; it is to do our duty and our whole duty, thoroughly and fearlessly ; it is to embrace the free institutions of our country ; and to hold them up, with all our might, as if it were our last struggle upon earth. And then, if the blood of civil war shall flow, it will not stain our garments. If disgraceful outrages, gaining strength by indulgence and temporary success, shall proceed from stage to stage, till they destroy the lives of men, women, and children, pull down and demolish the temples of justice, and even wrap cities in flames, you and I, and our character and memory, both now and with posterity, will at least escape the consuming conflagration of reproach.

I am, Gentlemen, your much obliged servant,

DANIEL WEBSTER.

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## Release of Hungarian Refugees 265

*To George P. Marsh, Esq., &c., &c., Constantinople.\**

Washington, February 28, 1851.

SIR, — I am directed by the President to address you on the subject of the Hungarian refugees who are now in the Turkish dominions.

It is understood by this government that Mr. Kossuth and forty or fifty others, his companions, are in confinement in Kutyayieh, in Asia Minor, where they have been for a year or more, and that they continue to feel an earnest desire to come to the United States.

By a despatch of my predecessor you were instructed to offer to the Sublime Porte to receive Mr. Kossuth and his companions on board of one of the national ships of the United States to convey them to this country.

It would have been extremely gratifying to the government and people of the United States if this proposition could have been at that time accepted; but it is understood that its not having been complied with by the Sublime Porte did not arise from a wish on his Imperial Majesty's part to detain them, or from any unwillingness that they should proceed to the United States, but was in consequence of the Sultan's offer to Austria to detain these persons for one year; at the expiration of which time, unless further conventions should be entered into to prolong their detention, they should be at liberty to depart.

If this be so, the time is near at hand when their release may be expected, and when they may be permitted to seek an asylum in any part of the world to which they shall be able to procure the means of transportation.

It is confidently hoped that the Sublime Porte has not made, and will not make, any new stipulation with any power for their further detention; and you are directed to address yourself urgently, though respectfully, to the Sublime Porte on this question.

You will cause it to be strongly represented, that, while this government has no desire or intention to interfere in any manner with questions of public policy or international or municipal relations of other governments, not affecting the rights of its

\* This letter should have been inserted among the Diplomatic Papers, in the preceding division of the work.

own citizens, and while it has entire confidence in the justice and magnanimity and dignity of the Sublime Porte, yet, in a matter of such universal interest, it hopes that any suggestions proceeding from no other motives than those of friendship and respect for the Porte, a desire for the continuance and perpetuity of its independence and dignified position among the nations of the earth, and a sentiment of commiseration for the Hungarian exiles, may be received by the Porte in the same friendly spirit in which they are offered, and that the growing good feeling and increasing intercourse between the two governments may be still further fostered and extended by a happy concurrence of opinion and reciprocity of confidence upon this as upon all other subjects. Compliance with the wishes of the government and people of the United States in this respect will be regarded as a friendly recognition of their intercession, and as a proof of national good-will and regard.

The course which the Sublime Porte pursued, in refusing to allow the Hungarian exiles to be seized upon its soil by the forces of a foreign state, or to arrest and deliver them up itself to their pursuers, was hailed with universal approbation, it might be said with gratitude, everywhere throughout the United States. And this sentiment was not the less strong because the demand upon the Sublime Porte was made by governments confident in their great military power, with armies in the field of vast strength, flushed with recent victory, and whose purposes were not to be thwarted, nor their pursuit stayed, by any obstacle less than the interposition of an empire prepared to maintain the inviolability of its territories, and its absolute sovereignty over its own soil.

This government, jealous of its own territorial rights, regarded with great respect and hearty approbation the firm and lofty position assumed by his Imperial Majesty at that time, and so proudly maintained under circumstances well calculated to inspire doubt, and against demands urged with such gravity, and supported by so formidable an array. His Imperial Majesty felt that he should be no longer an independent prince if he consented to be less than the sovereign of his own dominions.

While thus regarding the political position and conduct of the Sublime Porte, in reference to other powers, his Imperial Majesty's generosity in providing for the wants of the fugitives

thus unexpectedly, and in so great numbers, throwing themselves upon his protection, is considered equally worthy of admiration.

On the other hand, it is not difficult to conceive what may have been the considerations which led the Sublime Porte to consent to remove these persons from its frontiers, require them to repair to the interior, and there to remain for a limited time.

A great attempt at revolution against the established authorities of a neighboring state, with which the Sublime Porte was at peace, and with which it desired to preserve friendly relations, had only then been suppressed. The chief actors in that attempt had escaped into the dominions of the Porte. To permit them to remain upon its frontiers, where they might project new undertakings against that state, and into which, if circumstances favored, they could enter in arms at any time, might well have been considered dangerous to both governments; and the Sublime Porte, while protecting them, might certainly also prevent their occupying any such position in its own dominions as should give just cause of alarm to neighboring and friendly powers. Their removal to certain localities might also be rendered desirable by considerations of convenience to the Sublime Porte itself, upon whose charity and generosity such numbers had so suddenly become dependent.

The detention of these persons for a short period of time, in order that they might not at once repair to other parts of Europe to renew their operations, was a request that it was not unnatural to make, and which it was certainly in the discretion of the Sublime Porte to grant, without any sacrifice of its dignity or any want of kindness towards the refugees.

But at this time all possible apprehension of danger or disturbance, to result from their liberation, has ceased. It is now more than a year since the last Hungarian army surrendered, and the attempt at revolution and the establishment of an independent government, in which they were engaged, was most sternly crushed by the united forces of two of the greatest powers of Europe. Their chief associates are, like themselves, in exile, or have perished on the field, or on the scaffold, or by military execution. Their estates are confiscated, their families dispersed, and every castle, fortress, and city of Hungary is in the possession of the forces of Austria.

They themselves, by their desire to remove so far from the

scene of their late conflict, declare that they entertain no hope or thought of other similar attempts, and wish only to be permitted to withdraw themselves altogether from all European association, and seek new homes in the vast regions of the United States. For their attempt at independence they have most dearly paid; and now, broken in fortune and in heart, without home or country, — a band of exiles, whose only future is a tearful remembrance of the past, whose only request is to spend their remaining days in obscure industry, — they wait the permission of his Imperial Majesty to remove themselves, and all that may remain to them, across the ocean, to the uncultivated regions of America, and leave for ever a continent which to them has become more gloomy than the wilderness, more lone and dreary than the desert.

The people of the United States expect from the generosity of the Turkish monarch, that this permission will be given; they wait to receive those exiles on their shores, where, without giving just cause of uneasiness to any government, they may enjoy whatever of consolation can be afforded by sympathy for their sufferings, and that assistance in their necessities which this people have never been late in offering to any, and which they are not now for the first time called upon to render. Accustomed themselves to high ideas of national independence, the people of the United States would regret to see the government of the vast empire of Turkey constrained by the force of circumstances to exercise the duty of keeping prisoners for other powers. You will further say to the Sublime Porte, that if, as this government hopes and believes, Mr. Kossuth and his companions are allowed to depart from the dominions of his Imperial Majesty at the expiration of the year commencing in May, 1850, they will find conveyance to the United States in some of its national ships, now in the Mediterranean Sea, which can be spared for that purpose; and you will, on receiving assurances that these persons will be permitted to embark, ascertain precisely their number, and immediately give notice to the commander of the United States squadron on that station, who will receive orders from the proper authorities to be present with such of the ships as may be necessary, or can leave the station, to furnish conveyance for Kossuth and his companions to the United States.

DANIEL WEBSTER.

*To George Griswold, Esq., and others, in Reply to a Letter transmitting an Invitation signed by more than five thousand Citizens of New York, "Friends of the Union, without Distinction of Party."*

Washington, May 9, 1851.

GENTLEMEN,— I have received your communication by the hands of Mr. Williams, and I acknowledge myself overwhelmed by this new proof of regard from the city of New York. An invitation to visit that city, from so many thousands of "friends of the Union, without distinction of party," as much surpasses my merit as it exceeds my expectation. I have read the names, and, as you suggest may be probable, many of them are known to me, and I know them to be men of high honor and character, of business and industry, possessing a great stake in the country, and active supporters and props of all the institutions of benevolence and charity, morality and religion, literature and science, which adorn the great commercial metropolis of the United States.

Gentlemen, I have no wish to appear in public for purposes of ceremony or entertainment; nor can I say that I feel the necessity of any occasion at present to express my sentiments in regard to public affairs. All that I think, and all that I feel, on the great topics of the hour, is concealed from nobody. But, notwithstanding all this, and notwithstanding that my public duties are likely to demand my attention rather imperatively for some weeks to come, I yet cannot persuade myself to say that I may not, at no distant time, make an effort to meet my friends in New York.

One thing, Gentlemen, is certain, that, if I address you at any time, you will hear no change of sentiment, nor any faltering of voice, in support of that cause which is so dear to your hearts and to mine.

With grateful and profound regard, I remain, Gentlemen, your friend and obliged, humble servant,

DANIEL WEBSTER.



*To a Number of Friends at West Dennis, Mass.*

Washington, July 14, 1851.

GENTLEMEN, — I have received your friendly letter of the 4th of this month, and am highly gratified with the patriotic sentiments expressed therein. Indeed, I should have expected nothing else, because such sentiments are worthy of those Pilgrim Fathers from whom you are descended, as well as of the general character of your community.

It will give me much satisfaction, if circumstances should allow, to accept your invitation to pass a day among you. In the mean time, I shall be most happy to send to each of you such productions of mine as may fully explain my sentiments in respect to the great questions of the present time.

With some of you, I have the pleasure of being personally acquainted, as I have often been in your good town of Dennis, as well as in all the other towns on the Cape. I see also attached to your letter many names not personally known to me, but belonging to families with which I have had acquaintance in former times. I have always found the air of your county delightful in summer, and there are many sea views remarkably fine; and I suppose I ought to confess, also, that in these my pleasant visits I did not entirely neglect the streams, so highly estimated by the anglers who have thrown the fly in them.

Gentlemen, the nature of your population is somewhat peculiar. I have often been struck by the very great number of sea-captains, as well as other mariners, which the county of Barnstable and the neighboring islands furnish. On the Cape and on the islands, I have frequently conversed with persons who seemed as well acquainted with the Gallipagos Islands, the Sandwich Islands, and some parts of New Holland, as with our counties of Hampshire and Berkshire.

I was once engaged in the trial of a cause, in your district, in which a question arose respecting the entrance into the harbor of Owheye, between the reefs of coral rock guarding it on either side. The counsel for the opposite party proposed to call witnesses to give information to the jury concerning this entrance. I at once saw a smile, which I thought I understood; and suggested to the judge, that very probably some of the jurors had seen the entrance themselves; upon which seven out

of the twelve jurors rose, and said that they were quite familiarly acquainted with it, having seen it often.

The occurrence, I dare say, is remembered by that most worthy man and eminent judge, now living, as I am happy to know, and enjoying in advanced life the affection of friends, and the respect of all who know him; I mean Judge Putnam. This incident shows the nature of the employments pursued by your neighbors and yourselves.

With the more elderly gentlemen of your county I have had the pleasure of frequent conversations concerning early Revolutionary times, and especially respecting that extraordinary man, James Otis. I have been where he lived, and examined such of his papers as I could find; but in the latter part of his life he destroyed most of his correspondence. Mr. Tudor has written a very good history of his life, and you all know the emphatic eulogy pronounced on him by the elder Adams, namely, that it was James Otis who set the ball of the Revolution in motion. Warm, eloquent, and highly impassioned in the cause of liberty, his brilliant life was terminated by a stroke of lightning.

None were earlier to begin, none more cordially embraced, or more zealously struggled to maintain, the cause of the Revolution, than the people of the Cape. All the region about the birthplace of James Otis, and the Thomas's, and the other true-hearted patriots of those times, is to me a sort of classic ground; remote from large cities, scattered along an extensive coast, there was yet, I think, in no part of the country, a more fervent devotion to the patriotic cause than was manifested by your ancestors.

Gentlemen, I am sure you ascribe quite too much merit to my efforts in behalf of the Union and of the Constitution. I can only say, I have done what I could, and all that I could; and that I shall not slacken my hand. Perhaps it is natural that you should be attached to free and regular constitutions of government, since all know that the first written constitution in the country was composed and signed on board of the *Mayflower*, while she was riding at anchor in one of the harbors of the Cape. Your own prosperity, Gentlemen, the success of all your leading pursuits, the prosperity of your county, and of the whole State of Massachusetts, are at this moment living

monuments of the benefits conferred by the Constitution of the United States, and the administration of government under it.

Your soil has always been a free soil; as such, you and your ancestors have cultivated it for centuries; it needs no new christening. But what the people of Massachusetts wanted, and your country among the rest, before the adoption of the present Constitution, was FREE SEAS; *free seas*, on which their industry could be displayed, and their national rights protected. By the blessing of Providence they have enjoyed this freedom and this protection for a long course of years, and have flourished and prospered under them beyond all former example.

What if your soil be not of the richest quality? What if it be not fertile, like Western New York and the Western States? I still hardly know a part of the country in which the people enjoy more substantial comfort. I have traversed the whole, from the "outside" in Provincetown to the line of Plymouth, without seeing an instance of ragged poverty or of absolute want. Your labors are on the sea. In a more emphatic sense than can be said of any other people, your home is on the deep. Nevertheless, the home of your families, the home of your affections, the home to which you return with so much gladness of heart, is in the various towns on the Cape, "where all your treasures be."

I trust that there is not a man among you who does not feel and see that the prosperity of his labor is mainly connected with the administration of the government of the United States; and therefore I trust that the political air of the Cape will always remain as healthy as its natural atmosphere, and that it will be as free from faction and fanaticism as that is from fogs and vapors.

If your hardy and enterprising young men go eastward, pursuing their employment, to the Bay of Chaleur, the Straits, or the Grand Bank, do they not receive a positive protection and encouragement from the laws of the United States? If they take a wider range, and, in pursuit of larger objects, coast along Brazil, double the Cape, and thence steer west, or south, or north, in the vast Pacific, do they not find that they are safely covered by the shelter of their flag, which no power on earth ventures to treat with disrespect?

My friends of West Dennis, discourage fanciful ideas, ab-

stract notions, and all inconsiderate attempts to reach ends, which, however desirable in themselves, are not placed within the compass of your abilities or duties. Hold on, my friends, to the Constitution of your country, and the government established under it. Leave evils which exist in some parts of the country, but which are beyond your control, to the all-wise direction of an overruling Providence. Perform those duties which are present, plain, and positive. Respect the laws of your country, uphold our American institutions as far as you are able, consult the chart and the compass, keep an eye on the sun by day, and on the constellations, both of the South and the North, by night; and, always feeling and acting as if our united constitutional American liberty were in some degree committed to your charge, keep her, so far as it depends on you, clear of the breakers. Whatever latitudes you traverse, on whatever distant billows you are tossed, let your country retain her hold on your affections. Keep her in your hearts, and let your carol to her ever be, —

“ Lashed to the helm,  
Should seas o’erwhelm,  
I’ll think on thee.”

I am, my friends, with sincere regard, your obliged fellow-citizen, and obedient servant,

DANIEL WEBSTER.

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*To Mark A. Cooper, Esq., Macon, Georgia.*

Marshfield, October 6, 1851.

MY DEAR SIR, — I have received the friendly invitation addressed to me by you as the organ of the Southern Central Agricultural Association, to meet its members at their Agricultural Fair in Macon. I thank you for your kindness in thus remembering me at the approach of an anniversary so interesting to all engaged in agriculture.

I am a farmer, on a small scale, on the sea-coast of New England; a very different occupation from that of him who possesses a rich cotton or rice plantation in Georgia. Attention to agriculture has been one of my ruling propensities from

my earliest years; and I like to see it, and to study it, in whatsoever form it is prosecuted. Your rice-meadows and cotton-fields it has afforded me great pleasure to visit; and I am aware that in other parts of Georgia the great staple of wheat is produced in an abundance that we do not witness in New England. For these reasons, my dear Sir, it would give me much gratification to accept your invitation to attend the fair.

But there is another reason. Men are more important than things. Those who own the soil, and cultivate it, are more interesting than the soil itself. My chief pleasure, therefore, in such a meeting would be, to see an assembly of the people of Georgia; to exchange with them the congratulations of countrymen; to assure them that I rejoice in their prosperity, and feel towards them the proper sympathies of a fellow-citizen.

Let me take the occasion to add, my dear Sir, that, as the forms and products of your agriculture are quite different from ours, as your soil and climate are different, and as your social and domestic institutions are also different, it was never intended by the Constitution under which we live, that so foolish and impracticable a thing as amalgamation, in these respects, or any of them, should be attempted between Northern and Southern States. The States are united, confederated;—

“ Not, chaos-like, together crushed and bruised,  
But, like the world, harmoniously confused;  
Where order in variety we see,  
And where, though all things differ, all agree.”

My prayer to Heaven is, that, in the midst of all this “variety” pervading the several States, “order” may still be preserved among them all; and that the Constitution of this country, the main foundation on which this “order” rests, may be always loved and venerated by all, and continue for ever, as the greatest civil blessing for us and our posterity. And since my public duties will not allow me to be present at the fair in Macon, I pray you, my dear Sir, to present, not only to the committee, but to all who may be assembled, my cordial regards and good wishes.

I am, Sir, your obliged fellow-citizen and obedient servant,

DANIEL WEBSTER.

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*To Mr. J. T. Woodbury, Chairman of the Committee of Arrangements for the Celebration at Acton, Mass.*

Marshfield, October 15, 1851.

MY DEAR SIR,— If my public duties would permit, there is no occasion of the kind which I would attend with more pleasure than the erection of a monument to the memory of Isaac Davis. His brief public history and untimely grave not only called forth my admiration, but enkindled my enthusiasm, in youth; and in later years, when I have conversed respecting him with those who saw him on the morning of that eventful 19th of April, marked the undaunted courage with which he marched up and met the fire of the foe, the manner in which he received the fatal shot, and the complacency and beauty of his manly countenance as he lay a corpse, with wounds still fresh and bleeding, my heart has melted within me, and my eyes gushed out with tears.

I have read all that I could find, and gathered up all that I could learn, of his high and noble character. He fell in his early manhood, one of the very first martyrs in the cause of liberty, and, if I mistake not, the first American officer who sealed his devotion to the cause with his own blood. In the scene at Concord Bridge, he seems to stand out in marked, prominent, and bold relief. I have had the pleasure of speaking of his character as I thought of it in the Senate of the United States; and most happy should I be in passing a day with those who are the children of fathers who were his neighbors, and perhaps with some who may remember to have seen him.

Let me ask you to present, in my name, the following sentiment to the company: —

ISAAC DAVIS: An early grave in the cause of liberty has secured to him the long and grateful remembrance of his country.

I am, my dear Sir, with high regard, your obedient servant,

DANIEL WEBSTER.



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